UNIVERSITY OF THE WITWATERSRAND, JOHANNESBURG

A research report submitted to the Faculty of Commerce, Law, and Management in partial fulfilment of the requirements for the degree of Master of Commerce specialising in Taxation

Challenges that arise in respect of tax knowledge, tax compliance, and tax complexity for small and medium enterprises (SMEs) in South Africa.

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Degree:	Master of Commerce (Specialising in Taxation)
Date:	31 March 2025

ABSTRACT

Mamman et al. (2015, p. 5) found that there is a strong relationship between small and medium enterprises, economic growth and poverty reduction. Small and medium enterprises' survival and growth are therefore important. This research report identifies the challenges that arise in respect to tax knowledge, tax compliance and tax complexity for South Africa's small and medium enterprises.

The research report discusses which businesses are small and medium enterprises, the tax knowledge required of these enterprises, the tax compliance requirements faced by these enterprises, the tax complexity faced by these enterprises, and the tax challenges in relation to the value-added tax and employees' tax in respect of tax knowledge, tax compliance and tax complexity faced by these enterprises in South Africa.

The research report suggests that there are challenges that arise in some cases with respect to tax knowledge, tax compliance, and tax complexity and therefore this research report concludes with highlighting areas that require further research.

KEYWORDS

Small and medium enterprises, tax knowledge, tax compliance, tax complexity, value-added tax, employees' tax

DECLARATION

I declare that this research report is my own work and not that of anyone else and it has not been submitted to any university other than the University of the Witwatersrand, Johannesburg. This research report is submitted in partial fulfilment for the degree of Master of Commerce (Taxation) in the School of Accountancy at the University of the Witwatersrand, Johannesburg.

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31st March 2025

ACKNOWLEDGEMENTS

Firstly, I would like to thank Almighty God for giving me strength throughout this journey. To my late mother, father, and sister, thank you for your spiritual guidance and protection.

To my supervisor, Prof Maeve, thank you for your patience, passion, dedication, availability and for excellent supervision throughout the course of research report writing. I am grateful that you stood by me. I wish to express my utmost gratitude for your invaluable advice, inputs, time, and patience in reviewing, correcting, providing feedback on drafts, and more importantly, for your presence that I have felt throughout my entire dissertation studies.

I am also most grateful to my wife Lusanda Zuma for all her encouragement and support and always checking up on me daily. To my niece, Lethabo Thaba, this is to show you that you can do it, never forget that. I wish to acknowledge my family for the encouragement and support throughout my studies.

Thank you!

TABLE OF CONTENTS

CHAPTER 1 - INTRODUCTION

1.1 Introduction

1.1.1 Background

This research report identifies and analyses the value-added tax and employees' tax challenges for small and medium enterprises in South Africa. It is an experience of this author that the employees' tax and value-added tax are types of taxes that small and medium enterprises are regularly exposed to and required to comply with. This report focuses on small and medium enterprises that are operating inside the formal economy and that are attempting to comply with the relevant legal requirements that fall on them, rather than focusing on those small and medium enterprises that operate outside the formal economy and may largely ignore their legal obligations.

There are different terms used to describe small and medium enterprises, for example, small business, small enterprise, micro-business, small business corporation, and such terms are used usually in tax legislation and other legislation. In this report, the general term used to refer to these entities is small and medium enterprises.

Small enterprise is used and referred to in terms of s 1(1) of the National Small Enterprise Amendment Act[1] 29 of 2004 (Republic of South Africa, 2004). Its introduction as discussed in section 2.2.2 of this report was meant to define small enterprises and ensure that there is one definition to be utilised by state organs in their support programmes and other initiatives intended for small enterprises.

[1] This Act is being amended: Schedule 1 has been repealed, and new regulations are yet to be introduced. On 25 April 2024, the National Council of Provinces passed the National Small Enterprise Amendment Bill and sent it to the President for assent on a date to be determined. The definition of a 'small enterprise' in this Act is one of the definitions examined in this report but because the regulations have not yet been published, this report is based on the Act before the amendment.

‘Micro business’ is defined in para 1 of the Sixth Schedule[2] to the Income Tax Act 58 of 1962 (Republic of South Africa, 1962), as a natural person (or deceased or insolvent estate of a natural person that was a registered micro business at the time of death or insolvency) or company where the qualifying turnover does not exceed the amount of R1 million of that person for the year of assessment. In the instance of a company, such a company should throughout the year of assessment, not have holders of its shares, other than a natural person (para 3(*f*)(ii) of the Sixth Schedule). Micro business definition is used, for example, in para 2(1) of the Sixth Schedule in respect of the turnover tax to categorise which persons are to qualify as micro businesses for the turnover tax system.

small business is defined in para 57(1) of the Eighth Schedule as a business of which the market value of all its assets does not exceed R10 million as of date of the disposal of the asset or interest. The definition of a small business is used to categorise a business that is referred to in para 57(2) of the Eighth Schedule, in that a natural person must, when determining an aggregate capital gain or aggregate capital loss, disregard a capital gain determined in respect of the disposal of, for example, an active business asset of a small business owned by that natural person as a sole proprietor as discussed in detail in section 2.4 of this report.

Small business corporation is defined in s[3] 12E(4)(*a*) of the Income Tax Act and it is intended to categorise which business will qualify for the accelerated depreciation allowance provided for by s 12E(1) in respect of plant or machinery brought into use for the first time by the taxpayer on or after 1 April 2001 for the purpose of that taxpayer’s trade, and is used by that taxpayer directly in a process of manufacturing (or any other process which is of a similar nature) other than mining or farming and is carried on by that taxpayer, as is discussed in detail in section 2.3.1 of this report.

The research report identifies and analyses what the challenges are for small and medium enterprises in South Africa in respect of the knowledge required, compliance requirements, and complexity of value-added tax and employees’ tax.

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[2] References to Schedules are to Schedules to the Income Tax Act 58 of 1962 unless stated otherwise
[3] References to Sections are to Sections of the Income Tax Act 58 of 1962 unless stated otherwise

This report assesses knowledge required, compliance requirements and complexity in respect of registration requirements, the calculations of tax, returns that need to be submitted, and records that need to be kept for value-added tax and employees' tax.

Small and medium enterprises that are discussed in this report in respect of the value-added tax and employees' tax are those that could be owned by an individual or corporate entity.

There are many different types of enterprises carried on by small and medium enterprises. However, in this report, it is enterprises that run property rental businesses that are specifically referred to. Property rental businesses will be used as an example. It is the experience of this author that there are some complex issues within the property sector that may cause small and medium enterprises to make errors, for example, where a student accommodation supply is a commercial accommodation as defined for the purposes of value-added tax as discussed in detail in section 4.2.3 of this report.

1.1.2 Small businesses

The South African Revenue Service (SARS) states (2024d) that small businesses are the lifeblood of the South African economy. Therefore, there are tax incentives designed specifically for the encouragement of the growth and prosperity of these enterprises.

1.1.3 Tax incentives for small and medium enterprises

The small business sector's important role in the South African economy is well documented (Arendse, 2024). It is the experience of this author that the South African tax system has tax incentives geared for the small business sector, for example, turnover tax and small business corporation.

A small business that qualifies as a small business corporation in terms of s 12E(4)(*a*) does not pay the income tax on its first R95 750 of taxable income for the year of assessment, ending any date between 1 April 2024 and 31 March 2025, and pays the income tax in accordance with progressive rates, in that the higher the taxable income, the higher the income tax rate that the said small business pays (para 5 of the Tax rates 2024/2025, in the Income Tax Act). Small businesses can qualify for an accelerated depreciation of the assets owned by these businesses in terms of s 12E, which is discussed in detail in section 2.3 of this report.

A further tax incentive provided to small businesses is turnover tax. SARS states that the turnover tax is a tax system that is meant to make it easier for the micro businesses to meet their tax obligation. Turnover tax replaces other forms of taxes, such as value-added tax, income tax, provisional tax, capital gains tax and dividends tax for micro businesses with a qualifying annual turnover of R1 million or less, though the micro business that is registered for the turnover tax may elect to remain in the value-added tax system (SARS, 2024e.) The tax rates for the turnover tax for year of assessment ending on 28 February 2025 (para 8 of the Tax rates 2024/2025, in the Income Tax Act) and the table below is extracted from para 8 of the Tax rates 2024/2025, in the Income Tax Act.

Taxable turnover	**Rate of tax**
Not exceeding R335 000	0 per cent of taxable turnover
Exceeding R335 000 but not exceeding R500 000	1 per cent of amount by which taxable turnover exceeds R335 000
Exceeding R500 000 but not exceeding R750 000	R1 650 plus 2 per cent of amount by which taxable turnover exceeds R500 000
Exceeding R750 000	R6 650 plus 3 per cent of amount by which taxable turnover exceeds R750 000

To obtain clarity and certainty on the SARS Commissioner’s interpretation and application of the tax laws, small and medium enterprises may approach the Commissioner to obtain what is called the ‘advance tax ruling’ (s 79 of the Tax Administration Act 28 of 2011) (Republic of South Africa, 2011). There is a special rate for the application and cost recovery fees provided for micro, small, and medium enterprises to obtain the advance tax ruling services starting with no fee charged for less than 15 hours of service, thereafter R650.00 per hour and a reduced application fee of R2 500.00 per application (SARS, 2024f).

Paragraph 57 of the Eighth Schedule is one of the tax incentive schemes that has been introduced to provide relief for small business owners, upon disposal of their interests in the small businesses, as discussed in detail in section 2.4 of this report.

Small and medium enterprises are so important to South Africa that in 2014 the government established the Department of Small Business Development that focuses solely on small and medium enterprises (Bureau for Economic Research, 2016, p. 6).

1.2 The research problem

1.2.1 The statement of the problem

What are the challenges that arise with respect to tax knowledge, tax compliance and tax complexity for small and medium enterprises (SMEs) in South Africa?

1.2.2 Sub-problems

- Which businesses qualify as small and medium-sized enterprises?
- What is the required tax knowledge of small and medium enterprises?
- What are the tax compliance requirements faced by small and medium enterprises?
- What is the tax complexity faced by small and medium enterprises?
- What are the tax challenges faced by small and medium enterprises in respect of tax complexity, tax knowledge and tax compliance in South Africa?

1.3 Research methodology

The report examines the literature to identify challenges that arise in respect of tax knowledge, tax compliance, and tax complexity for small and medium enterprises in

South Africa. This report makes use of a qualitative research approach; the resource data were collected from primary and secondary sources such as tax laws and regulations, tax authorities' writings and documents, National Treasury documents, tax commission reports, and academic articles.

1.4 Limitations

This research report excludes other types of taxes because, as discussed below, small and medium enterprises do not need to deal with them as regularly as compared to value-added tax and employees' tax.

Small and medium enterprises could be liable to various types of taxes. Naicker and Rajaram (2018, p. 98) stated that small and medium enterprises in South Africa could be accountable for eleven various types of taxes, including employees' tax, provisional tax, income tax, transfer duty, donations tax, value-added tax, and turnover tax. This report focused on only two types of taxes, namely, value-added tax, and employees' tax for the following reasons:

- Both types of taxes are regularly incurred by small and medium enterprises.
- Employees' tax is payable monthly which may add to administrative burden which can lead to human errors and increase the risk of interest and penalties (para 14(6) of the Fourth Schedule) levied against small and medium enterprises for non-compliance.
- Value-added tax is payable every two months, in some cases, which may add to the administrative burden, which could lead to human errors and increasing the risk of the interest and penalties (s 39(1) of the Value-Added Tax Act 89 of 1991) (Republic of South Africa, 1991) levied against small and medium enterprises for non-compliance.
- Employees' tax takes more time to calculate, submit and pay, including having to deal with SARS, while value-added tax is considered time-complex (Naicker and Rajaram (2018, p. 102).

The following types of taxes will not be part of the report, as discussed below:

Turnover tax

Turnover tax is specifically targeted for a limited number of small businesses with a turnover equal to or less than R1 million for the year of assessment (para 2(1) of the Sixth Schedule). The Davis Tax Committee (2016, p. 13) stated that the registration of micro businesses for turnover tax was disappointing. In terms of para 3 of the Sixth Schedule, the disqualification criteria for turnover tax may further exclude many micro businesses and may be contributing factors to why micro businesses did not register for turnover tax. For example, para 3(*f*)(ii) of the Sixth Schedule states as one of the disqualifying criteria that a person does not qualify as a micro business for a year of assessment where

> in the case of a company, at any time during its year of assessment, any holder of shares in that micro business is a person other than a natural person (or the deceased or insolvent estate of a natural person).

A company will be disqualified from being a micro business where at any time during its year of assessment, the holders of shares in such micro business, is a person other than a natural person (or the deceased or an insolvent estate of a natural person) (para 3(*f*)(ii) of the Sixth Schedule). This disqualification will automatically exclude from the turnover tax system other small and medium enterprises that may be owned by, for example, a company or a trust. The turnover tax threshold of R1 million in terms of para 2(1) of the Sixth Schedule is still as it was stated by the then Minister of Finance in his 2015 Budget Speech (Manuel, 2015, p. 19). It is submitted that the turnover tax threshold having not been adjusted for over 9 years may make the system unavailable to some micro-businesses, further adding to fewer micro businesses being part of the turnover tax system. Section 12E(1) relating to an accelerated depreciation tax incentive is discussed in section 2.3 of this report, which may be more attractive than the turnover tax system for some of the micro businesses.

The turnover tax has been excluded from this report as many small businesses do not qualify for it.

Income tax

Income tax is excluded and considered to be beyond the scope of the report because it is mainly considered during a submission of the income tax returns by small and medium enterprises once a year, which is not as frequent as employees' and value-added tax returns submissions.

Provisional tax

This type of tax has not been covered by this report given that small and medium enterprises are not required to comply with it as often as value-added tax or employees' tax, since the provisional tax returns are only submitted twice in a year of assessment.

Securities transfer tax

The tax has not been covered by this report given that it is applicable only on purchase of shares in terms of the s 2(1)(*a*) and (*b*) of the Securities Transfer Tax Act 25 of 2007 (Republic of South Africa, 2007). It is submitted that securities transfer tax will be paid infrequently in comparison to value-added tax or employees' tax.

Dividends tax

It is the experience of the author that it is not often that small and medium enterprises return capital to the shareholders in the form of the dividends and therefore, this type of tax has not been covered by this report.

CHAPTER 2: SMALL AND MEDIUM ENTERPRISES DEFINITIONS

2.1 Introduction

South African legislation has different definitions of what could meet the requirements of small and medium enterprises as referred to in this report and their intended purposes to be discussed below, for example, para 57(1) of the Eighth Schedule, s 12E(4)(*a*), and s 1(1) of the National Small Enterprise Amendment Act. For the purposes of this report, those enterprises that are regarded as small and medium enterprises are as described in section 2.5 below.

2.2 National Small Enterprise Act 102 of 1996

2.2.1 Background

The intention of the National Small Enterprise[4] Act 102 of 1996 (Republic of South Africa, 1996) was defined in the preamble of the Act:

- to provide for the establishment or the National Small Business Council and the Ntsika Enterprise Promotion Agency; and
- to provide guidelines for organs of state in order to promote small business in the Republic; and
- to provide for matters incidental thereto.

As stated immediately above, one of the intentions for the introduction of the National Small Enterprise Act was:

> to provide guidelines for organs of state in order to promote small business in the Republic.

To achieve this intention, the National Small Enterprise Act contained a definition of ‘small business’ in s 1(*f*) and the definition of the ‘small business’ was substituted with the definition of the small enterprise by the National Small Enterprise Amendment Act 29 of 2004 as discussed in section 2.2.2 of this report.

[4] The National Small Business Act was renamed the National Small Enterprise Act in December 2004.

With the intention of introducing the National Small Enterprise Act in order to provide guidelines for the organs of state to promote small business, it would have been a reasonable expectation that the organs of state would use one definition of a small enterprise to promote small enterprises. However, this is not the case. The Department of Small Business Development (2018, slide 27) stated that as part of the department's review of the definition of a small enterprise, it found that majority of the government entities, state organs, agencies, departments and businesses did not use the definition of a small enterprise outlined in the National Small Enterprise Act. Given that the state organs, agencies, departments and businesses did not use the definition of a small enterprise in the National Small Enterprise Act, it could result in confusion as to what was considered a small enterprise in South Africa. It could further lead to inconsistencies in the application of what was considered to be a small enterprise. In addition, some of the small and medium enterprises might not benefit from support programmes from other state organs, as a result of the other state organs not sharing the same definition as defined in terms of the Act.

2.2.2 Small enterprise definition

The definition of a small enterprise in s 1(*e*) of the National Small Enterprise Amendment Act is as follows:

> "Small enterprise" means a separate and distinct business entity, together with its branches or subsidiaries, if any, including co-operative enterprises, managed by one owner or more[,] predominantly carried on in any sector or subsector of the economy mentioned in column 1 of the Schedule and classified as a micro, a small or a medium enterprise by satisfying the criteria mentioned in columns 3 and 4 of the Schedule.

A small enterprise must be a separate and distinct business entity which means, it must be physically apart and clearly different from something else. The abovementioned definition of a small enterprise prescribes that such an entity must be owner-managed, which is a reasonable requirement in that, it is the experience of this author that the small and medium enterprises are ordinarily owner-managed. A business entity together, with its branches or subsidiaries may be a small enterprise as defined in s 1(*e*) of the National Small Enterprise Amendment Act. It appears that it is not clear if such subsidiaries will also qualify as a small enterprise separately to the parent-business entity or not, which it may result in confusion when the definition of a small enterprise is applied by the state organs. Some of the state organs may interpret the definition of a small enterprise to exclude those subsidiaries, that were already considered as part of a parent-business entity while other state organs may still consider the subsidiaries separately as a small enterprise. This confusion or lack of clear interpretation of whether subsidiaries should be identified separately as a small enterprise or not, may further lead to an inconsistency in the application of the definition of a small enterprise by the state organs or other interested agencies.

The Government Technical Advisory Centre stated that the need for the definition of a small enterprise in s 1(*e*) of the National Small Enterprise Act was as follows:

> A national definition of [a] small enterprise officially identifies small enterprises, in order to:
>
> - Inform the design, management and assessment of business support measures (i.e. programmes and services) in national and sub-national (i.e. provincial and local) territories.
> - Measure change in the business sector (i.e. statistical analysis).
> - Promote consistency in the use of terms in order to align government policy and legislation. (Government Technical Advisory Centre (2022, p. 1).

As per the *Government Gazette* no. 41970 (2018, p. 95), one of the purposes of the definition of a small enterprise is to identify small enterprises, so that the organs of the state can implement programmes and services to support such enterprises. Therefore, for enterprises to qualify for such programmes and services by the national and sub-national organs of the state, these enterprises will need to meet the definition of a small enterprise in terms of the National Small Enterprise Amendment Act. Therefore, it is evident that confusion pertaining to the definition of small enterprise may lead to inconsistency in application and practice.

In Schedule 1 as referred to in the definition of a small enterprise in s 1(*e*) of the National Small Enterprise Amendment Act, the heading of the table refers to the threshold to categorise enterprises into size or classes in the South African sectors by using two indicators, those being a ‘total annual turnover’ and ‘full-time equivalent of paid employees’ (Republic of South Africa, 2019, p. 2). This Schedule 1 previously used three indicators namely ‘full-time equivalent of paid employees’, ‘total annual turnover’ and ‘total gross asset value’ before the introduction of an amendment to the Schedule 1 of the National Small Enterprise Act in 2019.

The table below excludes the ‘full-time equivalent of paid employees’ indicator, is extracted from the Schedule 1 of the National Small Enterprise Amendment Act and categorise small enterprises in terms of sectors using a ‘total annual turnover’ indicator, for example, in ‘Manufacturing’, ‘Construction’, and ‘Retail, motor trade and repair services’.

Sectors or sub-sectors in accordance with the Standard Industrial Classification	**Size or class of enterprise**	**Total annual turnover**
Manufacturing	Medium	≤ 170.0 million
	Small	≤ 50.0 million
	Micro	≤ 10.0 million
Construction	Medium	≤ 170.0 million
	Small	≤ 75 million
	Micro	≤ 10.0 million
Retail, motor trade and repair services.	Medium	≤ 80.0 million
	Small	≤ 25.0 million
	Micro	≤ 7.5 million

The review by the Department of Small Business Development found that the third indicator that was ‘total gross asset value’, was often inappropriate and difficult to measure which resulted in Parliament amending the definition of a small enterprise, as published in the National Small Enterprise Act: Schedule 1: Amendment (Republic of South Africa, 2019, p. 2). As part of the review of the definition of a small enterprise, the Department of Small Business Development found

> contradictions between the NSEA[5] definition and definitions used in other pieces of legislation (Department of Small Business Development, 2018, slide 27).

[5] The NSEA refers to National Small Enterprise Act.

The inconsistencies of the definition of a small enterprise in the National Small Enterprise Act and other pieces of legislation found by the Department of the Small Business Development are still in place (see section 2.4.1 below).

2.3 Section 12E: small business corporation

2.3.1 Small business corporation

The then Minister of Finance in his 2001 Budget Speech (Manuel, 2001, p. 5) stated that the South African government, as part of economic reforms measures to enable employment creation and skills development, introduced tax incentives for companies embarking on investment in strategic industrial projects (s 12E of the Income Tax Act tax depreciation rules that are applicable for small businesses in the manufacturing sector and para 57 of the Eighth Schedule to the Income Tax Act).

The definition of a small business corporation in s 12E(4)(*a*) states:

> ... "small business corporation" means any close corporation or co-operative or any private company as defined in section 1 of the Companies Act or a personal liability company as contemplated in section 8 (2) (c) of the Companies Act if at all times during the year of assessment all the holders of shares in that company, co-operative, close corporation or personal liability company are natural persons, where—
>
> (i) the gross income for the year of assessment does not exceed an amount equal to R20 million: Provided that where the close corporation, co-operative or company during the relevant year of assessment carries on any trade, for a period which is less than 12 months, that amount shall be reduced to an amount which bears to that amount, the same ratio as the number of months (in the determination of which a part of a month shall be reckoned as a full month), during which that company, co-operative or close corporation carried on that trade bears to 12 months;
>
> (ii) at any time during the year of assessment, no holders of shares in the company or member of the close corporation or co-operative holds any shares or has any interest in the equity of any other company as defined in section 1, other than...;
>
> (iii) not more than 20 per cent of the total of all receipts and accruals (other than those of a capital nature) and all the capital gains of the company, close

corporation or co-operative consists collectively of investment income and income from rendering of a personal service; and

(iv) such company is not a personal service provider as defined in the Fourth Schedule...

The definition of small business corporation in s 12E(4)(*a*) states that any private company as defined in s 1 of the Companies Act or a personal liability company as contemplated in s 8(2)(*c*) of the Companies Act, close corporation or co-operative must at all times during the year of assessment have holders of its shares that are natural persons. Its gross income must not exceed R20 million provided that, in instances where the aforementioned entities traded for a less than 12 months, the gross income must be apportioned in a proportion to the number of the months these entities traded it bears to 12 months. It further requires that at any time during the year of assessment, no holders of shares in the company or member of the close corporation or co-operative holds any shares or has any equity interest in the equity of any other company as defined in s 1, other than those mentioned in s 12E(4)(*a*)(ii)(*aa*) to (*ii*), for example, a venture capital company as defined in s 12J (s 12E(4)(*a*)(ii)(*gg*)).

In addition to the special tax rate applicable to small business corporation discussed in section 1.1.3 of this report, s 12E deals with the deduction of the cost any plant or machinery (hereinafter referred to as an asset) owned by a taxpayer who qualifies as a small business corporation. The aforementioned section is also applicable to assets acquired in terms of an instalment credit agreement. Further, such assets that are used by the taxpayer in the process of manufacture or any other process which is of a similar nature carried on by that taxpayer and that are brought into use on or after 1 April 2001 will qualify for 100% allowance in the year that they are brought into use. The purpose of s 12E is to incentivise taxpayers, in order to promote an investment which could lead to employment creation and skills development, as stated by the Minister of Finance in his 2001 Budget Speech (Manuel, 2001, p. 5–6), that

> This Budget sets out a number of fiscal interventions in support of the broader economic reforms we seek – measures that enhance the volume and quality of investment, that encourage employment creation and promote skills development, and measures that will improve the efficiency of asset use.
>
> In support of investment:

- ...
- The tax depreciation rules applicable to small businesses in the manufacturing sector will be favourably amended...

Section 12E was introduced to provide accelerated depreciation as a form of tax incentive for certain taxpayers who invest, for example, in the manufacturing sector. One of the accelerated deductions is provided in s 12E(1) that states that 'a deduction equal to the cost of such asset shall be allowed in the year that such asset is so brought into use'.

Section 12E(1) prescribes that 100% deduction will be granted to a taxpayer on the first year in which an asset used directly in a process of manufacturing or any other process, which is of a similar nature, is brought into use for the first time by the taxpayer on or after 1 April 2001. In contrast, para (*c*) to the proviso to s 12C(1) states that for any new or unused machinery or plant that is owned by taxpayer or was acquired by the taxpayer in terms of instalment credit agreement as defined by s 1 of the Value-Added Tax Act and which is brought into use for the first time for the purposes of the taxpayer's trade and is used by the taxpayer directly in a process of manufacture carried on by the taxpayer or any other process carried on by the taxpayer, which is similar in nature other than mining or farming, a deduction shall be allowed under s 12C(1) and be increased to 40 percent of the cost of that machinery or plant in respect of the year of assessment during which the plant or machinery was or is brought into use for the first time and shall be 20% in each of the three subsequent years of assessment. The tax benefits provided for in s 12E(1) are better than the benefits provided by s 12C(1) and therefore, small enterprises will prefer to qualify for s 12E(1) than s 12C(1). This is because the small business corporation will enjoy better deductions provided in s 12E(1), given that the taxpayers will be entitled to a deduction equal to the cost of the asset in the year the asset was brought into use, as discussed above. This deduction is a lot more beneficial, compared to the deductions afforded to the taxpayers in terms of s 12C(1) over a period of 4 years.

Section 12E(1A) states that subject to s 12E(1), where any machinery, plant, implement, utensil, article, aircraft or ship in respect of which a deduction is allowable under s 11(*e*) ("asset") is acquired by a small business corporation under the agreement that is formally and signed on or after 1 April 2005 by every party to the agreement, the amount allowed to be deducted in respect of the asset must, at the election of the small of the small business corporation and subject to the provisions of s 11(*e*), be either:

> (a) the amount allowable in terms of and subject to that section; or
>
> (b) an amount equal to 50 per cent of the cost of the asset in the year of assessment during which it was first brought into use, 30 percent in the first succeeding year.

S 12E(1A) will be applicable to an 'asset' that is not used in the process of manufacturing or of similar in nature of the small business corporation as required in terms of s 12E(1). The amount of the wear and tear or depreciation for s 11(*e*) will be determined on the basis of the periods of use listed for the purpose of s 11(*e*) in a public notice issued by the Commissioner, or a shorter period of use approved by the Commissioner on application in the prescribed form and manner by the taxpayer (s 11(*e*)), where the deductions for wear and tear will be determined over a period of use or such a shorter period to be approved by the Commissioner as discussed above. It is not clear if such a period may be within the first year that such asset was brought into use. It is the experience of this author that s 11(*e*) provides for wear and tear over a period that is always longer than one year, making deductions provided for under the s 12E(1A) better.

2.3.2 Comparison of small business corporation and small enterprise definitions

The definition of a small business corporation in terms of s 12E(4)(*a*) requires that the holders of shares in the company, co-operative, close corporation or personal liability company are natural persons. The said definition of a small business corporation includes specifically, a company, close corporation, personal liability company and co-operative and the definition of a small enterprise in terms of s 1(1) of the National Small Enterprise Amendment Act uses the broad term of a 'business entity' and specifically includes co-operative enterprises and requires that those entities be owner-managed. The reference of s 1(1) of the National Small Enterprise Amendment Act to 'owner-managed' implies that the business entity will be owned by a natural person, managed by a natural person and it is consistent to the requirements of s 12E(4)(*a*) that for entities to qualify at all times during the year of assessment, the holders of shares of the said entities must be natural persons. Both definitions are consistent with each other in describing the entities which will be considered to be small businesses.

Section 12E(4)(*a*)(i) states that for the abovementioned entities, to qualify as a small business corporation, the said entities' gross income must not exceed R20 million, while the s 1(1) of the National Small Enterprise Amendment Act refers to Schedule 1 of the same Act, to categorise micro, small, and medium enterprises using both total annual turnover for example, between R10 million and R170 million for those in a construction sector, and total full-time equivalent of paid employees, resulting in both definitions being inconsistent with one another. The inconsistency arises due to the fact that the enterprises could qualify as a small enterprise in terms of s 1(1) of the National Small Enterprise Amendment Act, despite having a total annual turnover exceeding R20 million and such enterprises not qualifying as a small business corporation in terms of s 12E(*a*) as a result of its gross income having exceeded the R20 million threshold. Therefore, the aforementioned enterprises will not be entitled to the tax concessions provided for in terms of s 12E(1). As a result, confusion may arise as to why some enterprises are considered to be small enterprises according to one piece of legislation, while not qualifying as small enterprises according to another as discussed above.

Section 12E(4)(*a*) does not refer to the employees in a small business corporation definition while s 1(1) of the National Small Enterprise Amendment Act in its definition of a small enterprise refers to the total full-time equivalent of paid employees. The difference could result in inconsistency where small and medium enterprises which have qualified as a small business corporation in s 12E(4)(*a*) may not qualify as a small enterprise in terms of the National Small Enterprise Act, as a result of total full-time equivalent of paid employees exceeding the referred maximum number which is 250 employees in all categories in Schedule 1 of the s 1(1) of the National Small Enterprise Amendment Act.

Therefore, the qualifying requirements are inconsistent, namely, the R20 million gross income limitation referred to in s 12E(4)(*a*) could result in some of the enterprises being disqualified from the said section for non-compliance with the gross income limitation. The enterprise would be disqualified despite meeting the definition and criteria of small enterprises in terms of the Schedule 1 of s 1(1) of the National Small Enterprise Amendment Act. The inconsistency between definitions of a small business corporation and small enterprise could result in some small enterprises being excluded from support programmes that are intended for the growth and development of these enterprises. An example of such exclusions could be that a small enterprise operating in the construction sector would be considered to be medium enterprise where it has a total annual turnover of less than or equal to R170 million and 50 to 250 of total full-time equivalent paid employees and as a result, such medium enterprise will not qualify as a small business corporation in terms of s 12E(4)(*a*) because its total annual turnover has exceeded the R20 million gross income limitation referred to in the said section of the Act. In addition, confusion could arise in that some small enterprises which are considered as a small enterprise in terms of s 1(1) of the National Small Enterprise Amendment Act may incorrectly be defined as qualifying for the tax incentives provided for in terms of s 12E(1) when in reality, the enterprise may be disqualified due to its gross income exceeding the R20 million limitation referred to in the aforementioned section of the Act. This may lead to some enterprises claiming such tax incentives, resulting in overstatement of deductions, which could in turn lead to understatement tax penalties as a result of an overstatement of expenses (s 222(1) of the Tax Administration Act).

2.4 Once-off lifetime tax relief on a capital gain

The Income Tax Act provides tax incentives to small and medium enterprises, for example, para 57 of the Eighth Schedule, the purpose of which was intended to provide a once-off lifetime tax relief on a capital gain that:

> is only available to small business owners and is in respect of retiring individuals over 55 or where retirement is due to ill-health or infirmity' (SARS 2000, p. 12).

Paragraph 57 of the Eighth Schedule was proposed in 2000 as part of a proposal to introduce capital gains tax and was intended to provide a

> once off, lifetime exclusion of capital gains of up to R500 000 in respect of the disposal of a small business by reason of death, reaching the age of 55 or for reasons of ill-health

(National Treasury, 2000, p. 5).

Paragraph 57 of the Eighth Schedule has over the past years been reviewed and amended. The initial once-off lifetime exclusion in respect of total capital gains which was initially R500 000 in respect of the disposal of a small business by the reason of death, reaching the age of 55, or for reasons of ill-health, has been increased and is currently at R1,8 million (para 57(3) of the Eighth Schedule).

The definition of a 'small business' in para 57(1) of the Eighth Schedule reads as follows:

> ... a business of which the market value of all its assets, as at the date of the disposal of the asset or interest contemplated in subparagraph (2), does not exceed R10 million.

It is submitted that at the date of the disposal, a business's asset or interest in a qualifying partnership or company contemplated in para 57(2) of the Eighth Schedule must be valued to ascertain the asset's market value. It is the experience of this author that some small and medium enterprises do not know the market value of these enterprises' assets or interests. As a result, the need to value the said assets or interests will arise at the date of an event contemplated in para 57(1) of the Eighth Schedule.

The purpose of the definition of a small business in para 57(1) of the Eighth Schedule is to identify a small business for which the sum of capital gains amounts must be disregarded by a natural person, when determining an aggregate capital gain or aggregate capital loss in respect of the disposal of:

- An active business asset of that small business by a natural person as a sole proprietor (para 57(2)(*a*)); or
- An interest in each of the active business assets of that business which qualifies as a small business; owned in a partnership upon a natural person's withdrawal from that partnership (para 57(2)(*b*)); or
- An entire direct interest in a company, to the extent that the interest relates to active business assets of that business which qualifies as a small business of that company and that a natural person's interest is at least 10 percent of the equity of that company (para 57(2)(*c*)).

The ‘active business asset’ means an asset which constitutes an immovable property used for a business purposes or an asset (other than immovable property) used or held wholly and exclusively for business purposes, but excludes a financial instrument and assets held in the course of carrying on a business mainly to derive any income in the form of annuity, rental income, or a foreign exchange gain or royalty or income of a similar in nature (para 57(1) of the Eighth Schedule).

2.4.1 Small business, small enterprise and small business corporation definitions inconsistencies

The definition of a small business (para 57(1) of the Eighth Schedule prescribes that the market value of assets used to define a business that will qualify as small business at the date of disposal must not exceed R10 million. The categorisation of what constitutes a small business in terms of para 57(1) of the Eighth Schedule is inconsistent with the definition of a small enterprise in s 1(*e*) of the National Small Enterprise Amendment Act, which refers to the total annual turnover and total full-time equivalent of paid employees. It makes no reference to the market value of business assets in its categorisation of a small enterprise contrary to para 57(1) of the Eighth Schedule. In addition, the definition of a small business (para 57(1) of the Eighth Schedule) is inconsistent with the definition of a small business corporation (s 12E(4)(*a*)) in that the latter refers to a ‘gross income’ and it makes no reference to the market value of the business assets in its categorisation of the small business corporation.

The categorisation of what constitute a small business as per para 57(1) of the Eighth Schedule is in contrast to the findings of the review done by the Department of Small Business Development (2018, slide 16), where it found that a threshold value of the assets was inappropriate and difficult to measure. Therefore, it was recommended that two indicators be used to define enterprises, namely the total turnover and total full-time equivalent of paid employees. The inconsistency that exists in defining what constitute a small business (para 57 of the Eighth Schedule), small business corporation (s 12E(4)(*a*)), and what constitutes a small enterprise (s 1(*e*) of the National Small Enterprise Amendment Act) will continue to present inconsistencies when the legislation is applied, such that the small and medium enterprises may find themselves qualifying as such in the Income Tax Act, and not qualifying in the National Small Enterprise Amendment Act, as discussed below. In addition, the inconsistency exists within the Income Tax Act in that a definition of a small business (para 57(1) of the Eighth Schedule) and the definition of a 'small business corporation' (s 12E(4)(*a*)) uses a different matrix, be it the 'market value' of the assets or interest in the said small business or the 'gross income' of the small business corporation, to categorise the small business and small business corporation respectively. Confusion may arise when the tax legislation is applied as small and medium enterprises may find themselves uncertain as enterprises formerly qualifying under the definition of small business corporation may not necessarily qualify as a small business.

It could be that small and medium enterprises having to comply with tax laws must apply different qualifying requirements as to what constitutes a small business or small business corporation as compared to what might have been small and medium enterprises, as per these enterprises' sectors as defined and categorised under the National Small Enterprise Amendment Act. The inconsistency in the provisions of the two Acts will be evident when small and medium enterprises qualify for support programmes and projects initiated by the Small Enterprise Development Agency in terms of s 10(1) of the National Small Enterprise Amendment Act. On the other hand, enterprises may find themselves not qualifying as small and medium enterprises in terms of para 57 of the Eighth Schedule or s 12E(1) while the very same enterprises qualify for support programmes that are covered by the National Small Enterprises Act, resulting in inconsistency, and as a result, such enterprises are at a disadvantage. While not a challenge related to tax knowledge, tax compliance or tax complexity, the private and public sector agencies' understanding of the categorisation of small enterprises in terms of National Small Enterprise Act is important, as such agencies determine the qualifying criteria for such programmes. Should the set qualifying criteria not be in line with the National Small Enterprise Act, some small and medium enterprises including those that may or not qualify as 'small and medium enterprises' for tax purposes, may be excluded, which could negatively affect the said enterprises' growth and development. Due to possible exclusion, such programmes will not be consistent with the intent of s 10(1) of the National Small Enterprise Amendment Act.

The Department of Small Business Development (2018, slide 28) stated that private and public agencies found that the threshold value of assets and turnover were often not appropriate and difficult to measure. Paragraph 57(1) of the Eighth Schedule under the definition of small business uses the market value of assets to determine if the business qualifies as a small business. Given the findings by the Department of Small Business Development immediately above, it is more likely that in applying para 57(1) of the Eighth Schedule, similar challenges may be encountered.

It is also submitted that upon disposal, and to arrive at an amount of either an aggregate capital loss or aggregate capital gain referred to in para 57(2) of the Eighth Schedule, an amount of proceeds upon disposal will have to be determined. Part VI of the Eighth Schedule deals with what is defined as ‘proceeds’ in different events. The disposal events such as when a disposal happens that qualifies for the para 57(2) relief (para 57(2) of the Eighth Schedule), the said disposal events’ proceeds will be determined as equal to the amount received by or accrued to, or which is treated as having been received by, or accrued to, or in favour of, that person in respect of that disposal (para 35(1) of the Eighth Schedule). Where a disposal may involve scenarios where the amount by which any debt owed by the seller has been reduced or discharged (para 35(1)(a) of the Eighth Schedule), or where a lessee receives or accrues an amount from the lessor of the property for improvements effected to that property (para 35(1)(b) of the Eighth Schedule, it may be unusual for the taxpayers, but it appears that SARS has through its ITR14 form provided questions that may guide the taxpayers on how to report these types of transactions to SARS and as a result made the compliance with tax provisions much easier for taxpayers.

As referred to in para 57(2)(ii) of the Eighth Schedule, a disposal may happen as a result of a person’s death. Section 9HA(1) prescribes how the values of a deceased’s assets must be determined upon death. Section 9HA(1) states that:

> A deceased person must be treated as having disposed of his or her assets, other than ... at the date of that person’s death for an amount received or accrued equal to the market value, as defined in paragraph 1 of the Eighth Schedule, of those assets as at that date.

Upon a natural person’s death referred to in para 57(2)(ii) of the Eighth Schedule, the proceeds to be determined upon the disposal of an ‘active business asset’, interest in the partnership, or interest in the company due to death will be determined in terms of s 9HA. Section 9HA(1) provides that the deemed amount received or accrued, will be equal to the market value as defined by para 1 of the Eighth Schedule at the date of death.

The amount of proceeds in an event referred to in para 57(2) of the Eighth Schedule, will be determined as an amount equal to the amount received or accrued to the person (para 35(1) of the Eighth Schedule). It is submitted that where such a person disposes asset as referred to above for an amount which is not at arm's length, to a connected person as defined in s 1, the proceeds will be determined as the market value of the asset immediately before the disposal (para 38(1)(*a*) and (*b*) of the Eighth Schedule).

Due to the complexity of para 57 (1) of the Eighth Schedule which uses market value of assets as discussed in this section of this report, to categorise what a small business is, small and medium enterprises will use an expert to interpret the definition of a small business and determine the market value of all assets mainly because some of the small and medium enterprises do not record assets at market value in the financial statements but rather at cost amount, resulting in an increase of compliance costs. When a natural person is filing an income tax return in the tax period in which a disposal would have taken place, the ITR12 questions will include questions, for example:

- Did you dispose of any local assets attracting capital gain or loss (including Crypto Asset(s))?
- How many disposals (shares to be combined as one disposal) took place? (SARS, 2021, p. 2).

The first question clearly requires that a natural person would have knowledge of when the assets would result in either a capital gain or loss. It further assumes that a natural person will know what capital gain or loss is, which are not terms small and medium enterprises owners commonly use in their day-to-day business activities. Small and medium enterprises owners' lack of knowledge and low level of education (Myeko and Madikane, 2019, p. 8), and not being familiar with tax terminology, adds to tax complexity. Small and medium enterprise owners will consider hiring an expert to assist with filing the income tax returns, in respect of scenarios where capital gain or loss take place, which adds to an increase in compliance costs because of additional time required for the new scope of work added, where such experts were already contracted.

2.5 Conclusion

As discussed in section 2.2 and 2.3 of this report, there are different terms used to describe small and medium enterprises, for example, small enterprise, small business corporation, and small business. For the purposes of this report, an enterprise will be regarded as a small or medium enterprise if it has a gross income of R20 million or less as contemplated in s 12E(4)(*a*)(i) or assets with market value of R10 million or less as contemplated in para 57(1).

The state organs and private sector have not made use of the definition of a small enterprise in terms of the National Small Enterprise Act in their support programmes for small and medium enterprises (Department of Small Business Development, 2018, slide 27).

Despite the existence of a definition of a small enterprise in terms of s 1(1) of the National Small Enterprise Amendment Act, the Income Tax Act has different definitions to describe businesses, for example, small business corporation (s 12E(4)(*a*), and small business (para 57(1) of the Eighth Schedule, as discussed in section 2.3.1 and 2.4 of this report. As part of the review of the definition of a small enterprise, the Department of Small Business Development found 'contradictions between the NSEA definition and definitions used in other pieces of legislation' (Department of Small Business Development, 2018: slide 27). It is submitted such contradictions still exist, as evident from discussion in this chapter of this report.

As discussed in sections 2.3.2 and 2.4.1 of this report, the inconsistency in defining what constitutes a small business corporation (s 12E(4)(*a*)), a small business (para 57 of the Eighth Schedule) and a small enterprise (s 1(*e*) of the National Small Enterprise Amendment Act) will continue to exist when the legislation is applied such that the small and medium enterprises might find themselves qualifying as a small enterprise in the National Small Enterprise Amendment Act and the said enterprises not qualifying as a small business or small business corporation in the Income Tax Act. For example, a small enterprise may qualify as such for programmes and support having met the qualifying criteria in terms of s 1(*e*) of the National Small Enterprise Amendment Act but the enterprise may find itself not qualifying under the definition of a small business corporation in terms of s 12E(4)(*a*) due to exceeding the gross income limitation of R20 million referred to in the said section of the Income Tax Act.

Lastly, the inconsistency when the provisions of the above-mentioned Acts are applied, will be evident where small and medium enterprises qualify for support programmes and projects initiated by the Small Enterprise Development Agency in terms of s 10(1) of the National Small Enterprise Amendment Act and on the other hand, the enterprises do not qualify as a small business (para 57 of the Eighth Schedule) or small business corporation (s 12E(4)(*a*).

CHAPTER 3 – KNOWLEDGE, COMPLIANCE AND COMPLEXITY

3.1. Introduction

It is clear that taxpayers require knowledge to comply with the tax laws and regulations and that some of the tax laws are complex and the cause of the complexity differs from one tax type to the other. The knowledge of taxes is defined as the state where a taxpayer has an underlying awareness of the tax rules (Naape, 2023, p. 16).

It is the experience of this author that some small and medium enterprises are non-compliant with the tax laws because of their complexity. One of the factors that adds to the complexity is the frequent changes to the tax laws.

A complex tax system was found to be an obstacle for the small and medium enterprises and those who are willing to comply with tax laws and regulations (Abrie and Doussy, 2006, p. 5).

3.2 Knowledge

As stated in section 3.1 of this report, the knowledge required for taxes is defined as the state where a taxpayer has an understanding and awareness of the tax rules applicable:

> this includes basic understanding of the tax compliance status, filing dates, compliance laws, procedures and consequences as well as the manner in which tax liability is calculated and settled. Knowledge of the different regulations governing taxes and applicable tax reforms is also crucial to avoid both intended and unintended miscalculations (Naape, 2023, p. 16).

With the various types of taxes that small and medium enterprises may be subjected to, these enterprises are required to have some knowledge of when those types of taxes require returns to be filed and how to calculate tax liability, including how to process the payment. For example, how to calculate the employees' tax, and that the employees' tax returns are required to be submitted to the Commissioner within seven days after the end of the month on which the employees' tax was deducted or withheld by the employer, as discussed in section 5.3 of this report.

In addition, another type of tax is value-added tax which requires taxpayers to correctly compute their tax liability (s 16(1) of the Value-Added Tax Act 89 of 1991). It means that a taxpayer will need to have the ability to calculate taxes due, submit a return and make the due payment, and as a result, the taxpayer will require the relevant tax knowledge to be able to do that.

The definition of 'self-assessment' in s 1 of the Tax Administration Act introduced the concept of self-assessment with effect from 1 October 2012. Section 1 of the Tax Administration Act defines self-assessment as follows:

> "Self-assessment" means a determination of the amount of tax payable under a tax Act by a taxpayer and
>
> (*a*) submitting a return which incorporates the determination of the tax; or
>
> (*b*) if no return is required, making a payment of the tax...

In terms of the concept of the self-assessment, small and medium enterprises as taxpayers are expected to be able to determine amount of tax payable under a tax act and these enterprises must be able to submit a return and make a payment of the tax.

SARS (2018, p. 4) indicates that the self-assessment concept states that a taxpayer must determine their own tax liability and pay the tax. For the taxpayer to be able to comply with the self-assessment concept, the taxpayer will require the applicable tax knowledge, be aware of the information necessary to be submitted, submit tax returns and be aware of when to submit a tax return and pay any tax liability due. The types of tax that require small and medium enterprises to self-assess tax liability include value-added tax, as enterprises have to submit value-added tax returns as per s 28(1)(*a*) and (*b*) of the Value-Added Tax Act and the employees' tax returns as per para 2(1) of the Fourth Schedule.

For example, a vendor shall furnish the Commissioner with a return reflecting information as required and the said vendor must calculate amounts of tax in accordance with s 14 or 16 of the Value-Added Tax Act and pay the tax payable to the Commissioner (s 28(1)(*a*) of the Value-Added Tax Act).

Another example of a tax type where a taxpayer will self-assess is employees' tax, where an employer must deduct the employees' tax from remuneration in accordance with para 9,10 or 11 of the Fourth Schedule or s 95 of the Tax Administration Act, whichever is applicable, and pay over that deducted amount of the employees' tax to the Commissioner within seven days after the end of the month during which the said amount was deducted (para 2(1)(*a*) of the Fourth Schedule).

3.3 Compliance

Despite the knowledge challenges, small and medium enterprises must still comply with the tax laws. Bornman and Ramutumbu (2019, p. 1) state that the compliance is a priority for tax administrators such as SARS. In this section of the report, three aspects of compliance – registration, returns and record keeping – are discussed.

3.3.1 Registration

Value-added tax registration requirements differ from employees' tax registration requirements though the differing requirements are to be expected. However, there are two different registration thresholds that need to be kept in mind by small businesses. For example, para 15 of the Fourth Schedule states that a person who is an employer shall apply to the Commissioner in accordance with Chapter 3 of the Tax Administration Act, unless the employer has no employee liable for normal tax.

A person becomes liable to be registered for the purposes of value-added tax at the end of any month where the total value in respect of taxable supplies made by that person, in the course of carrying on an enterprise, has exceeded R1 million in the period of 12 months ending at the end of that month (s 23(1)(*a*) of the Value-Added Tax Act). A person becomes liable to be registered at the commencement of any month where the total value of taxable supplies, in terms of a contractual obligation in the period of 12 months reckoned from the commencement of the said month, will exceed R1 million (Section 23(1)(*b*) of the Value-Added Tax Act).

The registration requirements referred to immediately above, with respect to both the employees' tax and value-added tax, differs in that to register for the employees' tax, an employer needs to have an employee that is liable for normal tax. To determine if the employee is liable for normal tax, the income tax threshold of R95 750 for a natural person under the age of 65 years old, for the 2025 year of assessment, will have to be referred to by the employer in comparison to remuneration earned by the employee.

The income tax threshold will need to be considered on an ongoing basis when deciding whether to register or not as an employer. The employer has to register with the Commissioner within 21 working days upon determining that the employer has an employee liable for normal tax (s 22(2)(*a*) of the Tax Administration Act). In contrast with the value-added tax registration requirements, reference is made to the total value of taxable supplies having exceeded R1 million in the course of carrying on an enterprise at the end of any month over a period of 12 months preceding the end of the said month. The difference between the registration requirements of both value-added tax and employees' tax may add to administrative burden in that, in year 1 of carrying on a business there may be no need to register for employees' tax or value-added tax, but this needs to be considered on an on-going basis as the business grows.

In addition, with regard to the total value of the taxable supplies of R1 million referred to as the registration requirements for value-added tax, the amount rarely changes in that the last time it changed was on 20 February 2008 during the then Minister of Finance in his 2008 Budget Speech (Manuel, 2008: p. 21). Equally, for the employer to ascertain whether s/he must register as an employer, the remuneration of the employees must be calculated in order to determine if any of the employees' remuneration has not exceeded the income tax threshold. Although the latter does sometimes change, the changes are easily accessible, and when the changes are made by the Department of the National Treasury, the updated numbers are communicated at large, including on the SARS website, such that employers will easily have access to such information. As indicated in the discussion above, the difference in registration requirements is reasonable. Those enterprises not required to be registered for value-added tax may voluntarily register for the said tax (s 23(3) of the

Value-Added Tax Act). The legislation makes no reference to the fact that an employer may voluntarily register as an employer. There is an inconsistency between value-added tax and employees' tax registration requirements regarding registering voluntary for either of the types of taxes. The inconsistency may add to the administrative burden as the requirements need to be considered on an on-going basis as the business grows. In addition, there is no need for the employers to register where the employer has no employee that is liable for normal tax (para 15(1) of the Fourth Schedule) as they need not collect and pay over employees' tax because there is no employees' tax for the employees to pay, similarly, there is no benefit to SARS in registering an employer who is never going to pay anything to SARS because there is no tax liability.

The definition of the 'taxable supply' in terms of s 1 of the Value-Added Tax Act

> means any supply of goods or services which is chargeable with tax under the provisions of section 7(1)(a), including tax chargeable at the rate of zero per cent under section 11...

Small and medium enterprises will need to be able differentiate between those goods or services that amount to taxable supply and those that do not to avoid any errors. In addition, these enterprises must be able or seek expert advice to differentiate between taxable supply that are chargeable at zero percent under section 11 of the Value-Added Tax Act and those that are chargeable at a rate prescribed in section 7(1) of the Act. Failure to differentiate the goods or services as discussed immediately above could result in value-added tax liability computed incorrectly which may lead to penalties (s 39(1) of the Value-Added Tax Act) levied against small and medium enterprises.

In addition, there is a period referred to in value-added tax registration requirements of a 12-month period that a person must consider when determining if the total value of taxable supplies exceeds R1 million at the end of any month in the period of 12 month preceding the said month. In respect to the employees' tax, there is no period other than that an employer is obliged to register with the Commissioner if the employer has an employee who is liable for normal tax, in which case the said employer must do so within 21 working days (s 22(2)(*a*) of the Tax Administration Act). The period difference between value-added tax and employees' tax registration requirements may add to administrative burden in that in year 1 of carrying on business, there may be no need to register for employees' tax or value-added tax, but the period needs to be considered on an ongoing basis as the business grows.

It is important that taxpayers register with SARS and comply with the relevant tax laws such as value-added tax and employees' tax registration when the said taxpayers are obligated to do so given that registration is a starting point in ensuring that SARS can collect sufficient tax revenue on behalf of the government. Where small and medium enterprises are not registered for the tax such as value-added tax, it hinders revenue collection, blocks economic growth, and fuels unfair business competition with formal businesses (Schoeman, Evans and Du Preez, 2022, p. 1).

To comply with tax regulations, small and medium enterprises incur costs which could include excessive time spent by owners and staff to ensure compliance with rules and the expenditure incurred to hire specialised tax practitioners, accountants, and consultants (Naicker and Rajaram, 2018, p. 7). It is the experience of this author that some companies or state organs prefer to do business with entities that are tax compliant, which includes having registered as an employer where these entities are obliged to register as such. Many large businesses and government departments may require that their suppliers of goods or services be registered as value-added tax vendors (Moodaley, 2015, p. 15). Small and medium enterprises often cannot secure work due to not being registered for value-added tax, because one of the first requirements for some of the tenders is that the parties tendering must be registered for value-added tax. Many entities in practice miss tender deadlines due to delays in value-added tax registration (Baker MacKenzie, 2023, p. 1).

3.3.2 Returns

One of the tax compliance requirements is to ensure the submission of a tax return as and when required by the tax laws, as discussed below.

A person obliged to submit a tax return or who volunteers to do so, should do so as prescribed under a tax act or by the Commissioner and within dates as stipulated (s

25(1) of the Tax Administration Act). The dates for submission of a return referred to in s 25(1) of the Tax Administration Act are specified by the Commissioner in the public notice. Section 25(1) of the Tax Administration Act states that a return must be submitted in the prescribed form and manner by the date specified by the Commissioner in the public notice requiring the submission of a return. A person must submit a return as prescribed by a tax act or by the Commissioner, and as such, a person is required to sign a tax return when submitting it (s 25(3) of the Tax Administration Act). SARS may request that a taxpayer correct an undisputed error in a return (s 25(5) of the Tax Administration Act), and section 25(6) of the Tax Administration Act states that the time period for filing a return could be extended by SARS.

Every employer must submit a return when making a payment of the employees' tax (para 14(2) of the Fourth Schedule) and such employer must do so within seven days of the end of the month in which the said employees' tax was deducted or withheld (para 2(1) of the Fourth Schedule). This is discussed in detail in section 5.3 of this report. Paragraph 14(2) of the Fourth Schedule is a specific provision dealing with when a submission of the employees' tax return must be made, which corroborates s 25(1)(*b*) of the Tax Administration Act, which states that a person who is required under a tax act to submit a return must do so by the date specified in the tax act.

Every vendor shall within a period ending on the 25th day of the first month commencing after the end of a tax period relating to such a vendor, furnish the Commissioner with a return reflecting information as required and calculate the amounts of such tax and pay the tax payable to the Commissioner or calculate the amount of any refund due to the vendor (s 28(1)(*a*) and (*b*) of the Value-Added Tax Act). Section 28(1)(*a*) and (*b*) of the Value-Added Tax Act states when value-added tax return must be submitted and that information as required by the Commissioner must reflect in the said return. This corroborates the general rule referred to in ss 25(1)(*b*) and 25(2) of the Tax Administration Act which states that a person required under a tax act must submit a return by the date specified in the tax act and that a return must contain the information prescribed by a tax act respectively and such a return must be full and true.

As discussed above, there is a differing requirement relating to when a return must be submitted to the Commissioner regarding the employees' tax and value-added tax. It is submitted that such a difference is reasonable in that dates for submitting returns for both the employees' tax (para 2(1) of the Fourth Schedule) and value-added tax (s 28(1)(*a*) of the Value-Added Tax Act) remains the same every tax period to which either return is to be submitted. Managing the dates with these two types of tax is an additional administrative task that needs to be managed in addition to administration of other tax-related tasks that need to be managed, such as submission of provisional tax and income tax returns.

3.3.3 Record keeping

The records, books of account, and documents that are referred to under s 29 of the Tax Administration Act must be kept or retained in the original form, in a safe place or in the form that may be prescribed by the Commissioner (s 30(1) of the Tax Administration Act), which is applicable to both value-added tax and employees' tax. Section 29(1) of the Tax Administration Act which is applicable to both value-added tax and employees' tax states further tax compliance requirements. It stipulates that a person should keep records, books of account or documents that enable the person to observe the requirements of a tax act or are specifically required under a tax act or by the Commissioner through public notice, and those that could enable SARS to be satisfied that a person has complied with tax laws.

Section 29(3) of Tax Administration Act further stipulates that a person need not keep records as required under s 29(2)(*a*) and (*c*) of the Act after a period of five years, from the date of the submission of the return and the end of the relevant tax period. To keep records for up to five years will mean that small and medium enterprises must have the infrastructure to do so, resulting in an increase in tax compliance costs. Section 30(1) of the Tax Administration Act prescribes how that information should be kept, namely, in its original form, orderly and safely. Myeko and Madikane (2019, p. 5) state that small and medium enterprises lack business facilities, and most do not have space to keep business records. Due to the record keeping compliance requirements and with small and medium enterprises lacking business infrastructure and systems for the safekeeping of records, tax non-compliance by small and medium enterprises could remain a challenge for tax authorities.

3.4 Complexity

A complex tax system was found by Abrie and Doussy (2006, p. 5) to be an obstacle for small and medium enterprises and those who are willing to comply with tax laws and regulations.

It is the experience of this author that the South African tax law that changes frequently contributes to taxpayers being fatigued in dealing with regular tax law changes. Business Unity South Africa (2023) stated that dealing with regular changes results in regulatory fatigue, which compromises a company's ability to concentrate on its core business and be productive, competitive, and innovative.

South Africa is ranked number 20 out of 69 countries surveyed in the world in terms of complexity of its income tax system. Looking at other countries such as Kenya which is one of the three countries surveyed in Africa together with South Africa, Kenya is ranked number 28, indicating that it has more complex tax system than South Africa. The United Kingdom is ranked number 36 in terms of income tax complexity, meaning that it has a more complex tax system than both South Africa and Kenya. (Tax Complexity Index, 2020).

Evans (2016, p. 2) identified some of the causes of a complex tax system such as legislators' usage of the tax system to achieve certain outcomes, be it social or political goals, such as the introduction of sin taxes to discourage people from drinking or smoking. Further, where governments use the tax system to achieve welfare goals such as providing rebates and credits, it adds to a more complex tax system. Evans (2016, p. 2) stated that to encourage innovation among businesses, governments reward innovative businesses through further allowed deductions. All of the above adds to a more complex tax system. One of the areas identified is that life has become more complicated than before with more complex commercial transactions that require a response from tax authorities or legislators with even more complex tax laws and rules to deal with complex commercial transactions. (Evans, 2016, p. 2). Sometimes legislators could provide choices within the legislation and with more choices given to the taxpayers, it can lead to more time spent by taxpayers with their advisors trying to figure out which choice is best suited for them, resulting in costly time spent and money spent paying advisors by the taxpayers. Lastly, the tax system is complicated due to the changes in tax laws: that the more changes made, the more tax rules become complicated with said changes. In some instances, unintended consequences further complicate the existing tax system, which is still dealing with previous changes, and which results in a more complex tax system. (Evans, 2016, p. 2).

South Africa has regulatory challenges, including policy uncertainty, because of the regulatory and legislative changes and effectives dates often shifting, which reduces the ability of businesses to plan and comply with the law (Business Unity South Africa, 2023). It was found that in South Africa, government bureaucracy was one of the major obstacles to its entrepreneurial and business activity. Delay in obtaining relevant registrations and compliance permits are examples of these obstacles (SEDA, 2016, p. 10).

Small and medium enterprises could be liable to various types of taxes. Naicker and Rajaram (2018, p. 98) noted that small and medium enterprises in South Africa could be accountable for as many as eleven different taxes as discussed in section 1.4 of this report.

A range of different taxes could make it difficult for small and medium enterprises to comply. To comply with these taxes, small and medium enterprises must as per s 25(1)(*a*) of the Tax Administration Act submit tax returns with the required information on prescribed forms. Small and medium enterprises are required to pay taxes due as required by s 162(1) of the Tax Administration Act, and failure to pay taxes due means that these enterprises could incur penalties, fines and or interest levied on the outstanding tax debt amount owed to SARS, as stated under s 187(1)(*a*) and (*b*) of the Tax Administration Act. Examples where small and medium enterprises are required to pay taxes due are s 28(1)(*a*) and (*b*) of the Value-Added Tax Act which state that a vendor must furnish the Commissioner with a return reflecting such information as may be required for the purposes of the calculation of a tax, to calculate the amounts of such tax, and to pay tax payable to the Commissioner or calculate the amount of any refund due to the vendor.

Small and medium enterprises are faced with a complex tax system given that there are different types of taxes that small and medium enterprises are required to comply with. Small and medium enterprises' lack of trained personnel to comply with complex tax systems forces them to use external advisors, which comes at a cost, therefore becoming a burden for them (Naicker and Rajaram, 2018, p. 99).

Over and above the need to use advisors to comply with a tax system, Naicker and Rajaram (2018, p. 99) found that small and medium enterprises are incurring tax compliance costs including the following:

- Time spent by the small and medium enterprises owners to ensure compliance with tax laws.
- Expenses incurred when preparing bookkeeping records and filing tax returns.
- The costs incurred in engaging with specialised professionals such as tax practitioners and accountants.
- Costs spent dealing with SARS such as having to go to SARS offices and communication costs.

3.5 Conclusion

The knowledge required for taxes is defined as the state where a taxpayer has an understanding and awareness of the tax rules applicable as discussed in section 3.1 of this report. The taxpayers may not have sufficient knowledge required, because of challenges such as lack of ability to calculate taxes when due as required by a self-assessment principle as discussed in section 3.2 of this report which states that the self-assessment is the ability of the taxpayer to determine the tax payable and his/her ability to submit returns and make a tax payment.

Despite the knowledge challenges, small and medium enterprises must still comply with the tax laws as discussed in section 3.3.1 of this report. Compliance includes registration with the Commissioner where required, such as where a person is required to register as an employer where such a person has an employee who is liable for normal tax as discussed in section 3.3.1 of this report.

The compliance requirements include where a taxpayer must know which records to keep and when to submit a tax return. There are various types of taxes that small and medium enterprises may be liable for, for example, donations tax, employees’ tax, value-added tax, transfer duty, capital gains tax (Naicker and Rajaram, 2018, p. 98), and these taxes have different registration requirements or due dates, and the tax returns must be submitted to the Commissioner as discussed in section 3.3.1 and 3.3.2 of this report respectively. These differing registration requirements as discussed in section 3.3.1 of this report may add to the administrative burden, because a taxpayer will be required to consider the registration requirements on an ongoing basis as business grows, until the registration is done.

It is the experience of this author that some of the small and medium enterprises are non-compliant with the tax laws and regulations because these tax laws are complex. There are various factors that add to the complexity of tax laws. One of the causes of complexity is the frequent changes in the laws as discussed in section 3.4 above. In addition, the use of the tax laws to address social welfare matters is among the causes of the complexity (see section 3.4). Further (see section 3.4), life has become more complicated than before with more complex commercial transactions entered into by the taxpayers, which requires a response from the legislators or tax authorities with ever more complicated tax laws and rules to deal with complicated transactions (Evans, 2016, p. 2).

CHAPTER 4 - VALUE-ADDED TAX

4.1 Introduction

4.1.1 Background

As stated in chapter 1 of this report, the report considers the knowledge required, compliance requirements, and complexity of value-added tax in relation to small and medium enterprises in South Africa in respect of four scenarios: registration, calculation, returns and record keeping.

Value-added tax is levied in terms of s 7(1) of the Value-Added Tax Act; the said section states that:

> Subject to the exemptions, exceptions, deductions and adjustments provided for in this Act, there shall be levied and paid for the benefit of the National Revenue Fund a tax, to be known as the value-added tax—
>
> (*a*) on the supply by any vendor of goods or services supplied by him on or after the commencement date in the course or furtherance of any enterprise carried on by him;
>
> (*b*) on the importation of any goods by any person on or after the commencement date; and
>
> (*c*) on the supply of any imported services by any person on or after the commencement date,
>
> calculated at the rate of 15 per cent on the value of the supply concerned or the importation, as the case may be.

Small and medium enterprises are expected to know that there are exceptions, exemptions, deductions and adjustments that are provided in the Value-Added Tax Act. Section 7(1)(*a*) of the Value-Added Tax Act prescribes that a person who must levy value-added tax must be a vendor, and value-added tax will be levied on the supply of goods or services by that person, in the course or furtherance of an enterprise. Value-added tax must be levied by a person who is a vendor or required to be a vendor and therefore, small and medium enterprises ought to know if the said enterprises are obliged to register as vendors or not to comply with ss 23(1) and 7(1) of the Value-Added Tax Act. Should a person who is required to be a vendor does not levy value-added tax as required by s 7(1)(*a*) of the Act, the vendor will be not complying with the Act and will be subjected to the penalties (s 39(1) of the Value-Added Tax Act) and (s 210(1) of the Tax Administration Act). This is because even if the taxpayer is not registered as a vendor, but such a taxpayer is obliged to register as such, the said taxpayer is required to levy value-added tax in terms of s 7(1) of the Value-Added Tax Act.

The definition of the 'vendor' in terms of s 1 of the Value-Added Tax Act, states that:

> any person who is or is required to be registered under this Act: Provided that where the Commissioner has under section 23 or 50A determined the date from which a person is a vendor that person shall be deemed to be a vendor from that date;

A 'vendor' includes not only those who are registered as a vendor, but also those that are required to be registered as a vendor but are not yet registered. A person who is required to be registered as a vendor is required by s 7(1) of the Value-Added Tax Act to levy value-added tax on the supply of goods or services in course of carrying on an enterprise. The registration requirements of a person as a vendor are discussed in detail in section 4.2.1 of this report.

4.1.2 Knowledge

Small and medium enterprises are expected to know that the said enterprises shall levy value-added tax at 15 percent for the benefit of the National Revenue Fund on the value of the supply made of any goods or services in the course or furtherance of any enterprise carried on by them (s 7(1)(*a*) of the Value-Added Tax Act). In addition, these enterprises need to know several provisions which are discussed in more detail in the following sections. For example, these enterprises need to know when they should be registered as vendors as discussed in section 4.2.1. They need to know whether they are supplying goods or services which are taxable in terms of s 7(1) of the Value-Added Tax Act as discussed in section 4.2.1, and if it is during the furtherance of any enterprise carried on by the said enterprises as discussed in section 4.2.2. These enterprises also need to know the value of supply as discussed in section 4.3.2. These enterprises need to know when such enterprises must make a payment of value-added tax to the Commissioner as discussed in section 4.4.1 of this report.

Small and medium enterprises must know that tax payable is calculated in terms of s 16 of the Value-Added Tax Act and know which tax period is applicable as discussed in detail in section 4.3.1 of this report. Once the returns are submitted to the Commissioner by a vendor, there are records and documents referred to in s 55 of the Value-Added Tax Act that must be kept, as discussed in section 4.5 of this report.

4.1.3 Compliance

Naicker and Rajaram (2018, p. 100) stated that small businesses lacked trained employees to manage tax compliance affairs, which could result in the need for additional costs to use experts, which may become a burden for these small businesses. For example, they may not be able to calculate value-added tax as will be discussed in section 4.3 below, or even to submit the tax returns as discussed further in section 4.4.1. Failure to be able to calculate value-added tax may result in small and medium enterprises incurring penalties (s 39(1) of the Value-Added Tax Act) which may result in these enterprises having non-compliance status with SARS should these penalties and related value-added tax are not paid. It is the experience of this author that the non-compliance status of these small and medium enterprises could negatively affect their business growth and development as non-compliance could exclude them from opportunities to do business with compliant entities.

4.1.4 Complexity

Naicker and Rajaram (2018, p. 94) stated that value-added tax, as indicated by the results of a survey of small business owners, that value-added tax is the most complex type of tax, and that employees’ tax was the least complex.

Due to the complexity of value-added tax, small and medium enterprises could consider hiring an external expert, who may charge higher rate for value-added tax as compared to other types of taxes that are less complex, for example, employees’ tax. Lesejane and Oben (2023, p. 58) stated that 'from the equity point of view, complicated tax rules may result in too high compliance costs’.

As stated above, the complicated value-added tax may result in high compliance costs for small and medium enterprises. Such high compliance costs may negatively impact growth and development for the and medium enterprises, where resources are diverted from investment in productive activities into compliance costs.

4.2 Registration

4.2.1 Knowledge of the registration requirements

A person who is obliged to apply or who may voluntarily apply for registration with SARS under a tax act is required to do so in terms of Chapter 3 of the Tax Administration Act or the relevant tax act (s 22(1) of the Tax Administration Act). To comply with s 22(1) of the Tax Administration Act in relation to value-added tax, a person becomes liable to register for value-added tax in terms of s 23(1)(*a*) of the Value-Added Tax Act. Therefore, a person must know when he or she is required to be registered for value-added tax in terms of s 23(1)(*a*) of the Value-Added Tax Act. Section 23(1) of the Value-Added Tax Act states that:

> Every person who, on or after the commencement date, carries on any enterprise and is not registered, becomes liable to be registered—
>
> (*a*) at the end of any month where the total value of taxable supplies made by that person in the period of 12 months ending at the end of that month in the course of carrying on all enterprises has exceeded R1 million;
>
> (*b*) at the commencement of any month where the total value of the taxable supplies in terms of a contractual obligation in writing to be made by that person in the period of 12 months reckoned from the commencement of the said month will exceed the above-mentioned amount:

Section 23(1) of the Value-Added Tax Act provides a scenario where a person will be obliged to register as a vendor, as discussed in detail below in this section of the report. In addition, there is scenario where a person may not be obliged to register for value-added tax and as such, that said person may voluntarily register for value-added tax (s 23(3) of the Value-Added Tax Act). Section 23(3) of the Value-Added Tax Act prescribes when a person may apply to the Commissioner for voluntary registration of value-added tax as discussed below in this section of the report.

Small and medium enterprises need to be aware of what a person is in terms of the Act, for example, any company, any body of persons, be it corporate or unincorporated, such as sole proprietor or any trust fund (s 1(1) of the Value-Added Tax Act). These enterprises need to know the definition of an 'enterprise' in s 1(1) of the Value-Added Tax Act, be it any enterprise or activity that is carried out continuously or regularly by any person in the Republic or partly in the Republic and in the course which the goods or services are supplied to any other person for a consideration whether for profit or not. In order for value-added tax to be applicable, goods or services must be supplied for a consideration and small and medium enterprises must know what is considered to be a consideration in terms of Value-Added Tax Act. Section 1(1) of the Value-Added Tax Act states that:

> "consideration", in relation to the supply of goods or services to any person, includes any payment made or to be made (including any deposit on any returnable container and tax), whether in money or otherwise, or any act or forbearance, whether or not voluntary, in respect of, in response to, or for the inducement of, the supply of any goods or services, whether by that person or by any other person, but does not include any payment made by any person as a donation to any association not for gain: Provided that a deposit (other than a deposit on a returnable container), whether refundable or not, given in respect of a supply of goods or services shall not be considered as payment made for the supply unless and until the supplier applies the deposit as consideration for the supply or such deposit is forfeited...

The definition of a 'consideration' includes any form of payment other than money and as a result, small and medium enterprises are required to know that what amounts to 'consideration' is not only related to money and that where goods or services are exchanged, which such trade is named 'barter', a consideration may exist as defined. A consideration need not to have been paid for it to exist, provided that the payment will be made. It is the experience of this author that depending on the industry, small and medium enterprises may have different ways on how the 'consideration' is determined as discussed in section 4.3.2 of this report in relation to how a consideration is to be determined by a vendor who is supplying a commercial accommodation for a period of more than 28 unbroken days.

Small and medium enterprises need to be aware of the definition of the 'taxable supply' in s 1(1) of the Value-Added Tax Act, as it is the supply of the goods or services which is chargeable with tax in terms of s 7(1)(*a*) of the Value-Added Tax Act including those taxable supplies on which value-added tax is chargeable at the zero rate in terms of s 11 of the Act.

These enterprises need to be aware that the period considered, when determining if a person is obliged to register as a vendor, is any preceding 12 month period ending at the end of any month where the total value of taxable supply made by that person in the said period in the course of carrying on all enterprises has exceeded R1 million.

Section 23(3) of the Value-Added Tax Act states that a person may on or after the commencement date, apply for registration with the Commissioner where the Commissioner is satisfied that, for example—

> (*b*) that person—
>
> (i) is carrying on any enterprise and the total value of taxable supplies made by that person in the course of carrying on all enterprises in the preceding period of 12 months has exceeded R50 000; or
>
> (ii) subject to the provisions of section 15 (2B) and any regulation made by the Minister in terms of this Act, is carrying on any enterprise where the total value of taxable supplies made or to be made by that person has not exceeded R50 000 but can reasonably be expected to exceed that amount within 12 months from the date of registration,
>
> other than any enterprise— …

Small and medium enterprises are expected to know that should they want to voluntarily register for value-added tax, they will have to meet the requirements stated in s 23(3) of the Value-Added Tax Act. In order to comply with s 23(3) of the Value-Added Tax Act, small and medium enterprises must be able to prove that the said enterprises have generated the total value of taxable supplies exceeding R50 000. If the total value has not been exceeded, the said enterprises must be able to prove that the total value of taxable supplies of R50 000 will be made in the next 12 months from the date of registration. It is the experience of this author that small and medium enterprises will indicate in the application form when the date of liability will be when making a registration application for value-added tax with SARS because the application form does require a 'date of liability' to be indicated by the taxpayer. The value-added tax registration application form asks for the liability date which is not a defined term in the Value-Added Tax Act, which causes practical challenges. For example, in a voluntary registration scenario where the liability date is chosen but that ends up falling before the registration date, the taxpayers will end up in a situation where it appears that they are liable for value-added tax but they cannot charge value-added tax and issue a value-added tax invoice because they do not have a value-added tax registration number as discussed below. SARS (n.d.3.) states that in the case of voluntary registration, a liability date is the date that the applicant indicates that the applicant intends to be registered for value-added tax; and in a compulsory registration scenario, a liability date is a date on which the applicant becomes liable to be registered for value-added tax because of the total value of taxable supplies has exceeded the R1 million threshold or is likely to exceed the said threshold. The final decision of the date of the registration is that of the Commissioner in terms of s 23(4)(*a*) of the Value-Added Tax Act, which may not be the same as the liability date chosen by the vendor. The practical challenge that arises with the date of registration in relation to the scenario is where the small and medium enterprises are registering for value-added tax voluntarily, and when the registration date is finalised, and the liability date is a date before the date of which registration was finalised. The challenge exists in that, during a period which the application for registration is still pending, having been submitted to SARS, a person will not be able to charge value-added tax in terms of s 7(1) of the Value-Added Tax Act as they do not have value-added tax registration number and therefore they cannot issue a tax invoice in terms of s 20(1) of the Value-Added Tax Act; this requires a value-added tax registration number in terms of s 20(4)(*b*) of the Value-Added Tax Act. Such a person will be expected to account for value-added tax liability from the liability date upon being registered as a vendor (SARS, (n.d. 3.), which may result in cash flow challenge as such person(s) would not have charged their customers value-added tax during the period in which the application was pending.

Section 23(4)(*a*) of the Value-Added Tax Act states that any person who applies to the Commissioner to be registered under the Value-Added Tax Act under Chapter 3 of the Tax Administration Act or subsection (2) and (3) of s 23 of the Value-Added Tax Act, and if the Commissioner is satisfied that the person is eligible for registration, that person shall be a vendor for the purposes of the Value-Added Tax Act, with effect from such date the Commissioner may determine; further, the decision shall be communicated to this person through SARS correspondence, either through the SARS e-filing system, or through that person' registered email address. It is the experience of this author that in some instances, SARS correspondence does not reach a person for a number of reasons, such as SARS e-filling system malfunctioning or his or her registered details not being updated. Where small and medium enterprises are not aware of their value-added tax registration date because they have not received the registration outcome communication, it could result in the small and medium enterprise incurring tax penalties in terms of s 39(1) of the Value-Added Tax Act due to non-compliance because of their failing to make the tax payment that is due.

SARS has recently, in 2023, changed the value-added tax registration process. Before COVID-19, if small and medium enterprises like any other taxpayer, volunteered or were required by law to register for value-added tax, these enterprises were required to make an appointment with SARS through one of its branches and physically attend the appointment through the enterprise's owners or appointed tax practitioner to attend the appointment with SARS. During COVID-19, taxpayers were not allowed to go to SARS branches, and therefore the value-added tax registration process was done completely online. The taxpayers were able to get the value-added tax reference numbers within days or in some cases, with immediate effect. SARS has, from May 2023, changed the value-added tax registration processes whereby taxpayers are again required to visit SARS branches as part of the process of applying for the value-added tax number. This value-added tax registration process has resulted in prolonging the timelines for receiving the value-added tax number, with some cases taking up to six weeks to be finalised. (Baker MacKenzie, 2023).

SARS announced through a media release May 2023 these changes related to the value-added tax registration processes. The changes came about because an internal SARS investigation found that there was an increase in suspicious value-added tax registrations, forcing SARS to reconsider the value-added tax registration process. (SARS, 2023, p. 1). In addition, SARS stated that all new applications for value-added tax registration would be subjected to stringent vetting processes, which could include that applicants were required to visit their nearest SARS branches for further validation and accreditation. It further stated that taxpayers would then be required to book online for the appointments and applicants would be required to print the necessary documents and bring them to the SARS branch on the date of the appointment. Furthermore, the value-added tax registration could only be finalised once SARS was satisfied that the application was lawful. (SARS, 2023, p. 1).

To register for value-added tax with SARS, small and medium enterprises owners can appoint a representative or attend the appointment by themselves; however, they are required to physically attend the registration appointment (Baker MacKenzie, 2023).

The challenges are that small and medium enterprises spend time and money to register for value-added tax. In the case of a one-man plumbing business, for example, the owner will be required to take time off work for this appointment, which means the business will not generate revenue in the owner's absence.

Further, such a small enterprise owner will be required to spend money to travel to the nearest SARS branch, which is another example of costs incurred. In other cases where a small or medium enterprise owner has decided to use a tax practitioner by giving the practitioner power of the attorney, the consultant must be paid to attend the SARS appointment on behalf of the small and medium enterprise, which will lead to an incurred cost. It is the experience of this author that:

- In some cases, SARS investigators will then be sent out to verify the legitimacy of the business by visiting the small and medium enterprises' premises. SARS could even request further interviews which may further take small and medium enterprises time out of their businesses.
- SARS' turnaround is 21 working days, meaning that the whole process could take weeks before small and medium enterprises can get the value-added tax number, and small and medium enterprises would more likely be uncompetitive in the business sphere because, in practice, some private corporates or government entities require that these institutions do business with value-added tax-registered businesses.

4.2.2 Enterprise

In terms of s 23(1) of the Value-Added Tax Act, small business owner will have to know if the said small business owner is carrying an enterprise as defined in s 1(1) of the Value-Added Tax Act. An 'enterprise' is defined in s 1(1) of the Act as follows:

> "enterprise" means—
>
> (*a*) in the case of any vendor, any enterprise or activity which is carried on continuously or regularly by any person in the Republic or partly in the Republic and in the course or furtherance of which goods or services are supplied to any other person for a consideration, whether or not for profit …

In terms of the definition of an 'enterprise' above, small and medium enterprises must know that the activity carried on must be done so continuously or regularly by such enterprises. The words 'regularly' or 'continuously' are not defined in the Value-Added Tax Act, therefore, their ordinary meaning will be used in this context. Small and medium enterprises must know that such activity or enterprise must be carried on wholly or partly in the Republic of South Africa. Small and medium enterprise must be able to identify the consideration received for the supply of such goods or services. Where a consideration cannot be identified, a vendor will not be carrying an enterprise. Small and medium enterprises must know that the definition of an 'enterprise' can be met even where profit is not made when supplying goods or services. In terms of the definition of an 'enterprise', a small or medium enterprise that may be running a rental property business may be carrying on an enterprise, unless it is making exempt supplies (para (v) of the proviso to the definition of 'enterprise' in s 1(1) of the Value-Added Tax Act) for example, in terms of s 12(*c*)(i) of the Value-Added Tax Act which states that:

> the supply of—
>
> a dwelling under an agreement for the letting and hiring thereof, and any "right of occupation" as defined in section 1 of the Housing Development Schemes for Retired Persons Act, 1988 (Act No. 65 of 1988) ...

as discussed in section 4.2.3 of this report.

4.2.3 Exempt supplies

To the extent that an activity involves the making of exempt supplies, it will not be deemed to be carrying on an enterprise, for example, a person who makes the supply of a dwelling referred to in s 12(*c*)(i) of the Value-Added Tax Act (para (v) of the proviso to the definition of 'enterprise' in s 1(1) of the Value-Added Tax Act).

Section 12(*c*)(i) of the Value-Added Tax Act states that

> the supply of—
>
> (i) a dwelling under an agreement for the letting and hiring thereof …

shall be exempt from tax imposed under s 7(1)(*a*) of the Value-Added Tax Act. A dwelling must be supplied under an agreement, which means that agreement must exist under which a dwelling is let and hired. A person must have an understanding of what a 'dwelling' is as defined in s 1(1) of the Value-Added Tax Act. Section 1(1) of the Value-Added Tax Act states that:

> "dwelling" means, except where it is used in the supply of commercial accommodation, any building, premises, structure, or any other place, or any part thereof, used predominantly as a place of residence or abode of any natural person or which is intended for use predominantly as a place of residence or abode of any natural person, including fixtures and fittings belonging thereto and enjoyed therewith ...

The definition of a 'dwelling' in s 1(1) of the Value-Added Tax Act specifically excludes a dwelling that is used to supply commercial accommodation. A 'commercial accommodation' is defined in s 1(1) of the Value-Added Tax Act:

> "commercial accommodation" means—
>
> (*a*) lodging or board and lodging, together with domestic goods and services, in any house, flat, apartment, room, hotel, motel, inn, guest house, boarding house, residential establishment, holiday accommodation unit, chalet, tent, caravan, camping site, houseboat, or similar establishment, which is regularly or systematically supplied but excluding a dwelling supplied in terms of an agreement for the letting and hiring thereof.

It is important a person must know when a dwelling is supplied as commercial accommodation. Small and medium enterprises carrying on activity of letting dwellings, such as student accommodation may be supplying an exempt supply as referred to in s 12(*c*)(i) of the Value-Added Tax Act unless these enterprises supply dwellings that qualify as a commercial accommodation which is not an exempt supply.

Some providers of student accommodation that are small businesses may assume that by providing a dwelling under lease agreements to students that they are providing an exempt supply. However, given the complexity of the Value-Added Tax Act provisions, some of the small and medium enterprises which supply dwellings as student accommodation, which qualify as commercial accommodation as defined in s 1(1) of the Act as to be discussed below, may not register with SARS where these enterprises are obliged to in terms of s 23(1)(*a*) and (*b*) of the Act due to lack of knowledge, resulting in non-compliance with tax provisions. It could be that these small or medium enterprises are assuming that supplying dwellings as students' accommodation is an exempt supply in terms of s 12(*c*)(i) of the Value-Added Tax Act. These enterprises will be deemed non-compliant with the tax act because of not being registered as vendors and subjected to administrative non-compliance penalties that will be imposed by SARS (s 210(1) of the Tax Administration Act). These enterprises may be subjected to an understatement penalty, for not having submitted a value-added tax return which these enterprises were obliged to submit (s 222(1) of the Tax Administration Act).

In addition, enterprises that provide commercial accommodation as defined under the definition in s 1(1) of the Value-Added Tax Act may find themselves incurring penalties and interest for failure to pay tax when due because these enterprises would have been a vendor as discussed in section 4.21 of this report and would have not made a tax payment to SARS when due as they had not been registered as vendors (s 39(1) of the Value-Added Tax Act).

The Value-Added Tax Act does not define the meaning of the words 'lodging' or 'board' and therefore, the ordinary English meaning of the words will be used. The word 'lodging' means 'a room or rooms rented out to someone, usually in the same residence as the owner'. The word 'board' means 'to provide a person with somewhere to live and meals in return for a payment'. (Oxford Languages, n.d.). A person who is providing student accommodation with domestic goods and services in return for rental payment will likely be providing lodging or boarding. Some providers of students' accommodation may provide domestic goods and services such as laundry, electricity, cleaning, meals, furniture in the student's rooms, a television set, equipment, appliances in common areas and as a result, their accommodation will qualify as commercial accommodation as defined in s1(1) of the Value-Added Tax Act. This means that small and medium enterprises which provide commercial accommodation in the form of student accommodation may be obliged to register as vendors in terms of s 23(1)(*a*) and (*b*) of the Value-Added Tax Act where these enterprises meet the requirements, which state that at end of any month where the total value of taxable supplies made by that person in the period of 12 months ending at the end of that month has exceeded R1 million in the course of carrying on all enterprises; and where at the commencement of any month, the total value of taxable supplies in terms of contractual obligation in writing to be made by that person in the period of 12 months reckoned from the commencement of the said month will exceed the R1 million. Due to cross-referencing of the sections in the Value-Added Tax Act, some of the small and medium enterprises in students' accommodation sector will find it difficult to understand the relevant provisions and as a result, some may consider using an expert, resulting in an increase in registration costs.

4.2.4 Compliance

To comply with s 23(1)(*a*) of the Value-Added Tax Act, small and medium enterprises will on an ongoing basis have to track if the total value of taxable supplies have exceeded the R1 million threshold requirement. Naicker and Rajaram (2018, p. 99) state that to comply with the Value-Added Tax Act requires a considerable degree of bookkeeping skill and time. Small and medium enterprises will need further access to bookkeeping time and skill because the value-added tax on every transaction will have to be identified from the tax invoices and recorded correctly in the accounting records. Further, where the transaction involves mixed use goods, for example, commercial rental that constitutes taxable supplies and residential accommodation that is exempt from value-added tax, the calculation of what value-added tax or transfer duty should be paid depends on, for example, whether there is a sale of going concern or not, in order to find the correct tax treatment. To comply with complicated compliance requirements, expert advice is going to be needed, which will result in increased compliance costs; but if they do not incur those compliance costs there is a risk that they may get the tax calculation wrong and pay more value-added tax than they should or underpay value-added tax and end up paying more penalties.

Due to lack of bookkeeping skill, even when some of the small or medium enterprises may hire external expert support, if the tracking of whether the R1 million threshold is met is not monitored, and in cases when it is discovered much later than the date on which the R1 million threshold was reached, that the R1 million threshold was exceeded, it can lead to tax penalties in terms of s 39(1) of the Value-Added Tax Act because of non-compliance with s 23(1) of the Act. For example, some small and medium enterprises as part of cost saving, only require that an external expert provide them with the annual financial statements; by the time these enterprises receive the annual financial statements, it may in some cases have already passed the end of the month by which the total value of taxable supplies made by these enterprises in the period of 12 months ending at the end of that month has exceeded R1 million in the course of carrying on all enterprises, to comply with s 23(1)(*a*) of the Value-Added Tax Act.

Small and medium enterprises are required to know that where these enterprises have entered into a contract from which at the beginning of any month, it is expected that the total value of taxable supplies to be supplied by these enterprises in the next 12 months starting from the said month will exceed R1 million threshold, they shall be obliged to register for the value-added tax (s 23(1)(*b*) of the Value-Added Tax Act). It is reasonable to expect that small and medium enterprises will be able to know what their contract value is, therefore, it is expected that these enterprises should know if the R1 million threshold will be exceeded or not. It is the experience of this author that some of the small and medium enterprises may not be aware that even though they have yet to make a total value of taxable supplies exceeding R1 million, they are required to register as vendors if, according to the contract, the said amount will be exceeded in the next 12 months. As such, these enterprises may not register with the Commissioner. This will result in these enterprises being non-compliant with the Value-Added Tax Act, which could lead to their incurring tax penalties for failure to pay tax when due, as referred to in s 39(1) of the Value-Added Tax Act, and in addition these enterprises may incur penalties (s 210(1) of the Tax Administration Act) as a result of not submitting value-added tax returns.

4.2.5 Complexity

The proviso to s 23(1) of the Value-Added Tax Act states that where the total value of taxable supplies as contemplated in s 23(1)(*a*) and (*b*) of the Act will likely exceed R1 million, it shall not be deemed to have exceeded the R1 million amount solely because of—

> (i) any cessation of, or any substantial and permanent reduction in the size or scale of, any enterprise carried on by that person; or
>
> (ii) the replacement of any plant or other capital asset used in any enterprise carried on by that person; or
>
> (iii) abnormal circumstances of a temporary nature.

Paragraph (i) of the proviso to s 23(1) of the Value-Added Tax Act refers to where the size of an enterprise was reduced due to a substantial and permanent reduction in the size or scale of any enterprise. Paragraph (iii) of the proviso to s 23(1) of the Value-Added Tax Act further states that where total value of taxable supplies exceeded R1 million due to the abnormal circumstances of a temporary nature, it shall not be deemed to have exceeded R1 million. What is considered to amount to abnormal circumstances, or a substantial and permanent reduction in the size of an enterprise, is not defined under the Value-Added Tax Act, which may present a need to interpret these phrases. Where there is such a need to interpret phrases in the tax legislation, it contributes to the complexity of the tax rules and it may add to an increase in compliance costs, because to comply with such complex tax rules, some of the small or medium enterprises will have to consider hiring an expert to interpret the tax legislation to assist with complying with the tax rules.

It is clear that small and medium enterprises will be expected to have the knowledge and skill to analyse events to determine if the event is permanent and if it is substantial in relation to their business. It is further clear that small and medium enterprises are expected to have knowledge to be able interpret if the event is temporary in nature. The knowledge required to interpret events may be a challenge due to lack of management skills and low level of education. As noted by Myeko and Madikane (2019, p. 8) some small and medium enterprises owners have low levels of education and lack management skills.

It is the experience of this author that there are no guidelines to refer to for small and medium enterprises on what would constitute cessation or a form of substantial and permanent reduction of the size of the enterprise carried on by these enterprises or what abnormal circumstances of a temporary nature mean. It is therefore submitted that due to a lack of comprehension skill to interpret the tax provisions, it may mean that some of the small and medium enterprises will use an external expert to comply with the tax legislation, resulting in additional compliance costs. Naicker and Rajaram (2018, p. 100) state that small businesses lack trained employees to manage tax compliance affairs, therefore, these enterprises may incur additional costs to use experts, which can become a cost burden for these small businesses.

4.2.6 Registration provisions in s 22 of the Tax Administration Act

Section 22(1) of the Tax Administration Act states that a person obliged to apply to, or who may voluntarily, register with SARS under a tax act must do so in terms of the requirements of Chapter 3 of the Tax Administration Act, which deals with registration requirements with SARS or if applicable, the relevant tax act. To comply with s 22(1) of the Tax Administration Act in relation to the value-added tax, a person will refer to s 23(1) and (3) of the Value-Added Tax Act to be able to know when he or she is obliged to register for value-added tax or when he or she may voluntarily register for value-added tax as discussed in section 4.2.1 of this report. Section 22(2) of the Tax Administration Act prescribes when a person is obliged to register with SARS, that a person should do so within the period stipulated and apply for registration for one or more taxes in the prescribed form and manner provided by SARS. The enterprise must furnish SARS with the further particulars and any documents as SARS may require for the registration purpose for the tax or taxes or under s 26(3) of the Tax Administration Act. The act states that the Commissioner through a public notice, may require a person to register for tax. Small and medium enterprises will be expected to know when they obliged to register for the value-added tax, compliance requirements applicable and within which period and how they should apply for the registration with SARS which is discussed in detail in section 4.2.1 above.

4.2.7 Ineligibility to be registered

Section 23(7) of the Value-Added Tax Act prescribes that the Commissioner may refuse to register a person as a vendor in terms of this Act because of one or more of the factors described in terms of s 23(7)(*a*), (*b*),(*c*) and (*d*) of the Value-Added Tax Act. Section 23(7) of the Value-Added Tax Act states that:

> Where the Commissioner is satisfied that any person who has applied for registration in terms of subsection (3) is not eligible to be registered in terms of this Act or should not be registered by reason of the fact that such person—
>
> *(a)* has no fixed place of abode or business; or
>
> *(b)* does not keep proper accounting records relating to any enterprise carried on by him; or
>
> *(c)* has not opened a banking account with any bank, mutual bank or other similar institution for the purposes of any enterprise carried on by him; or
>
> *(d)* has previously been registered as a vendor in respect of any enterprise, whether in terms of this Act or in terms of the Sales Tax Act, 1978 (Act No. 103 of 1978), but failed to perform his duties under either of the said Acts in relation to such enterprise,
>
> the Commissioner may refuse to register the said person as a vendor in terms of this Act and shall give written notice to that person of such refusal.

Small and medium enterprises should be aware that the Commissioner could decline a registration application for value-added tax because of the circumstances referred to above. The final decision on whether a person is registered for value-added tax lies with the Commissioner as referred to immediately above.

4.3 Calculation of tax payable

4.3.1 Background

The calculation of tax payable in respect of the value-added tax is governed by the provisions of s 16 of the Value-Added Tax Act, which is a lengthy provision that covers several different scenarios. The following aspects of section 16 of the Value-Added Tax Act that are relevant for this research report are discussed below:

- Section 16(1) prescribes that the tax payable shall be calculated in terms of the provisions of section 16 of the Act.
- Section 16(2) prescribes that no deduction of an input tax in respect of a supply of goods or services, or the importation of any goods or any other deduction in terms of Value-Added Tax Act, shall be made unless requirements listed therein are met.
- Section 16(3) prescribes the amounts that shall be deducted against the sum of the amounts of output tax when calculating tax payable in respect of a tax period.
- Section 16(4) prescribes when an output tax shall be attributed to a tax period in respect of a supply made by a vendor.

Section 16(1) of the Value-Added Tax Act states that the tax payable should be calculated in terms of provisions of this section, in respect of each tax period during which a vendor carried on an enterprise in respect of which the person is registered or is required to be registered in terms of s 23 of the Act.

Naicker and Rajaram (2018, p. 99) state that to comply with the Value-Added Tax Act requires a considerable degree of bookkeeping skill. Nyathi and Benedict (2017, p. 1) state that small businesses owners lack expert bookkeeping training and qualification to execute all bookkeeping duties. The of lack of bookkeeping skills could be a challenge for small and medium enterprises to calculate tax payable as required by s 16 of the Value-Added Tax Act. Due to lack of bookkeeping skills, small and medium enterprises may consider using external value-added tax experts, resulting in increased compliance costs.

4.3.2 Special provision

In the process of calculating an output tax, small and medium enterprises which provide commercial accommodation have a special provision to consider in terms of s 10(10) of the Value-Added Tax Act to avoid making calculations errors.

Section 10(10) of the Value-Added Tax Act prescribes how a consideration in money must be determined where a vendor is carrying on an enterprise that provides commercial accommodation for an unbroken period exceeding 28 days. Small and medium enterprises which provide student accommodation that supplies domestic goods and services might fall within apportionment provision of s 10(10) of the Value-Added Tax Act, which states that:

> Where domestic goods and services are supplied at an all-inclusive charge in any enterprise supplying commercial accommodation for an unbroken period exceeding 28 days, the consideration in money is deemed to be 60 per cent of the all-inclusive charge.

Students' accommodation that is supplied by small and medium enterprises with domestic goods and services will likely meet the criteria of the definition of commercial accommodation as discussed in section 4.2.3 of this report.

It is a common practice that students occupy accommodation for an unbroken period exceeding 28 days because the college or university calendar period is usually ten months with semesters exceeding an unbroken period of 28 days.

Small and medium enterprises which are supplying commercial accommodation will therefore have to calculate an output tax at rate of 15% applied to the consideration in money as determined in terms of s 10(10) of the Value-Added Tax Act. However, vendors may incorrectly apply tax provisions where they account for an output tax at 100% of the rental amount instead of 60% of the rental amount as stated in s 10(10) of the Act. This calculation error could happen due to lack of skill and sufficient tax knowledge.

The existence of the special provisions that are only applicable to a specific economic sector is a challenge on its own. For example, a small or medium enterprise owner who decides to diversify his business portfolio by venturing into student accommodation could potentially apply tax provisions incorrectly when accounting for value-added tax, given a lack of the sufficient value-added tax knowledge that is applicable in the property sector.

4.3.3 Input tax

Section 16(3) of the Value-Added Tax Act prescribes amounts of input tax that are to be deducted against the sum of the amounts of output tax of the vendor determined in terms of s 16(4) of the Act. Section 16(3) of the Act states that:

> Subject to the provisions of subsection (2) of this section and the provisions of sections 15 and 17, the amount of tax payable in respect of a tax period shall be calculated by deducting from the sum of the amounts of output tax of the vendor which are attributable to that period, as determined under subsection (4), and the amounts (if any) received by the vendor during that period by way of refunds of tax charged under section 7(1)(b) and (c) and 7(3)(a), the following amounts, namely—
>
> (*a*) in the case of a vendor who is in terms of section 15 required to account for tax payable on an invoice basis, the amounts of input tax—
>
> (i) in respect of supplies of goods and services (not being supplies of second-hand goods to which paragraph (b) of the definition of "input tax" in section 1 applies and supplies referred to in subparagraph (iiA)) made to the vendor during that tax period;
>
> (ii) (aa) subject to the provisions of item (bb), in respect of supplies of second-hand goods to which paragraph (b) of the definition of "input tax" in section 1 applies to the extent that payment of any consideration which has the effect of reducing or discharging any obligation (whether an existing obligation or an obligation which will arise in the future) relating to the purchase price for those supplies has been made during that tax period;
>
> (*bb*) in respect of supplies of second-hand goods to which paragraph (b) of the definition of "input tax" in section 1 applies which consist of—
>
> (A) fixed property in respect of which the provisions of section 9(3)(d) apply if transfer of that fixed property was effected by registration in a deeds registry and the fixed property was registered in the name of the vendor that makes the deduction during that tax period …

In terms of s 16(3) of the Value-Added Tax Act, the determination of tax payable will require that a vendor have knowledge of other sections of the Act, as its nature of cross-referencing sections adds to the tax complexity. The American Institute of Certified Public Accountants (1992, p. 10) state that one of the tax simplification indicators is where the section does not require knowledge of other sections, or it is self-contained. It is submitted that s 16(3) of the Value-Added Tax Act is not self-contained and requires knowledge of other sections of the Act, therefore it does not simplify the calculation of value-added tax payable and as a result, adds to the complexity of the Value-Added Tax Act.

4.3.4 Time of supply

A supply of goods or services shall, except where it is provided otherwise in the Value-Added Tax Act, be deemed to be at the time when an invoice is issued by the supplier or the recipient in respect of the supply; or the time any payment consideration is received by the supplier in respect of that supply, whichever is earlier (s 9(1) of the Value-Added Tax Act).

Section 9(3)(*d*) of the Value-Added Tax Act prescribes when a supply will have taken place in a case where a supply is that of a fixed property. Section 9(3)(*d*) of the Value-Added Tax Act states that:

> where goods consisting of fixed property or any real right therein are supplied under a sale, that supply shall be deemed to take place—
>
> (i) ……
>
> (ii) where registration of transfer of the goods is effected in a deeds registry, on the date of such registration;
>
> or
>
> (iii) on the date on which any payment is made in respect of the consideration for such supply,
>
> whichever date is earlier ...

A vendor who acquires a fixed property and makes a payment in respect of the consideration for such supply will be allowed to deduct an amount of input tax only when a fixed property is registered in the said vendor's name as required in terms of s 16(3)(*a*)(ii)(*bb*)(A) of the Value-Added Tax Act. However, if the very same vendor has made a supply under a sale in respect of which the provisions of s 9(3)(*d*) of the Act apply, the vendor will be required in terms of s 16(4)(*a*)(ii) of the Value-Added Tax Act to account for the amount of the output tax in the tax period in relation to the supply made by the vendor which will be when payment is made in respect of the consideration of that supply which has effect of reducing or discharging any obligation whether existing or which will arise in the future relating to the purchase price for that supply.

Where goods consisting of fixed property or any real right therein are supplied under a sale, that supply shall be deemed to take place under the provisions of s 9(3)(*d*) of the Value-Added Tax Act, which states that time of supply will be the earlier of payment date, or the date at which the registration of a fixed property is effected at the deeds registry. Where payment of any consideration which has the effect of reducing or discharging any obligation, whether the existing obligation, or obligation that will arise in future, relating to the purchase price for that supply has been made during that tax period, the said vendor will then be required to account for an output tax to the extent that payment has been made during the tax period in which the payment is made (16(4)(*a*)(ii) of the Value-Added Tax Act). It is the experience of this author that:

- Probably in most instances the payment date and transfer registration date will be the same or within days of each other; however this may sometimes not be the situation, as described below.
- In practice, a seller of a fixed property is free to ask a purchaser for an advance payment of the purchase price.
    - The advance payment of the purchase price will be facilitated through transferring attorneys that will require that the seller sign off an agreement stipulating that he has received such an advance payment.
    - The advance payment will usually be allowed where the transferring attorneys are comfortable that such a transfer of the property will be successful, usually, where both parties have signed all necessary transfer documents, and the transferring attorneys have secured a municipal clearance certificate related to the fixed property.
    - The purchaser may be motivated to agree to pay an advance payment of the purchase price to the seller in some cases because that could be used as a negotiating factor to agree on a reduced purchase price with the seller for that fixed property.

There is a timing inconsistency of when a vendor must account for an output tax in respect of supply of a fixed property, which is

- in the tax period falling on the date on which any payment is made in respect of the consideration for such supply,

- to the extent that payment of any consideration has the effect of reducing or discharging any obligation (whether an existing obligation or an obligation which will arise in the future)
- relating to the purchase price for that supply which has been made during that tax period (s 16(4)(*a*)(ii) of the Value-Added Tax Act); and

when the said vendor can deduct amounts of input tax in respect of supply of a fixed property where the said vendor acquired the said fixed property

- which is the tax period in which the transfer of that fixed property was effected by registration in a deeds registry, and
- the fixed property was registered in the name of the vendor that makes deduction during that tax period (s 16(3)(*a*)(ii)(*bb*)(A) of the Value-Added Tax Act).

This difference in timing creates an inconsistency in claiming an input tax deduction and accounting for output tax on a fixed property. Some small and medium enterprises may experience cash flow challenges, for example, a small or medium property investor who both purchases and sells fixed properties as taxable supplies. This vendor could be a property investor buying distressed properties, renovating them and putting them back on the market for sale. The tax period during which the registration of a fixed property is effected at the deeds registry is the tax period in which an input tax can be deducted against the amount of output tax (s 16(3)(*a*)(ii)(*bb*)(A)) which may be on a different date or even a later date to the payment date that is made in respect of the supply of that fixed property if an advance payment of the purchase price has been made. Thereafter, the transferring attorneys will transfer the balance of the purchase price to the seller on a date after the registration of the fixed property is effected at the deeds registry. Such timing difference will result in an inconsistency, which may cause a cash flow challenge. For example, a property investor signs an offer to purchase a fixed property (property 1) for R28 750 000 inclusive of the value-added tax and is required to pay an amount of R2 875 000 inclusive of the value-added tax on 15 September 2024 as an advance payment, as discussed in section 4.3.4 of this report when there are scenarios where sellers of fixed properties may ask for an advance payment of the purchase price for different reasons, for example, because the seller needs money urgently for personal use. Assume that the date on which the registration of property 1 is effected at the deeds registry is 15 November 2024. If the same enterprise sold another fixed property (property 2) that it already renovated and has received a payment of R575 000 inclusive of the value-added tax on 15 September 2024 for the property 2 – for which the registration is yet to be effected at the deeds registry – if for example, the property investor had asked that it be paid in advance. The property investor is required to account for the tax payable in terms of Category A, which means that 30 September 2024 is the end of its tax period (s27(1) of the Value-Added Tax Act). It is submitted therefore that in October 2024 when this property investor is submitting the value-added tax return for the September tax period, the output tax will be calculated as follows:

Description	Inclusive Charge	Output Tax
September: Amount received for payment towards a property disposal (Property 2)	R575 000	R75 000
Total Amounts	R575 000	R75 000

At the end of September 2024, the fixed property 1 is not yet registered and therefore, the amount of input tax on the advance payment of the purchase price (R375 000) may not be deducted against the sum of amounts of output tax of R75 000 (s 16(3)(*a*)(ii)(*bb*)(A) of the Value-Added Tax Act). Had the property investor been allowed to deduct the amount of input tax in a tax period when an advance payment was paid, the amount of input tax equal to R375 000 would be deductible against the sum of amounts of output tax of R75 000 resulting in a tax refund payable to the property investor by SARS of R300 000. Due to the timing period inconsistency, the property investor will only be able to deduct an amount of input tax (R375 000) against the sum of amounts of output tax in the November 2024 tax period. This timing difference could result in confusion and the submission of an incorrect return. In addition, this timing difference may result in a cash flow challenge because an input tax will only be allowed as a deduction on the registration of the fixed property at the deeds registry as compared to the output tax which is accounted for on payment date. The delay in allowing input tax deduction until the registration is effected could thus protect the fiscus if the property transaction did not proceed to registration.

Section 16(3)(*a*)(ii)(*bb*)(A) of the Value-Added Tax Act applies to an amount of input tax in respect of supplies of second-hands goods which consist of a fixed property in respect of which the provisions of s 9(3)(d) apply and such input tax shall be set off against the sum of amounts of output tax if transfer of that fixed property was effected by registration in a deeds registry, and the fixed property was registered in the name of the vendor that makes the deduction during that tax period. This is inconsistent with s 16(4)(*a*)(ii) of the Value-Added Tax Act that states that an output tax shall be attributed to a tax period where a supply has been made under a sale concluded on or after 6 June 1996 in respect of which the provisions of s 9(3)(*d*) of the Act apply to the extent that payment of any consideration which has the effect of reducing or discharging any obligation relating to the purchase price for the supply has been made during that tax period. As discussed above in this section of the report, for example, should a supplier receive from a buyer an advance payment as a consideration towards a purchase price of a fixed property, such a supplier as a vendor would be required to account for an output tax on the amount received even if the registration has not yet been effected at the deeds registry (s 16(4)(*a*)(ii) of the Value-Added Tax Act) in contrast to s 16(3)(ii)(*bb*)(A) of the Value-Added Tax Act; in that it states that the said buyer will only be entitled to deduct an amount of the input tax, against the sums of amount of the output tax collected by the buyer on supplies, that he has made which are attributable to that tax period only when the registration of the fixed property takes effect at the deeds registry.

Another challenge presented by s 16 of the Value-Added Tax Act arises from the complexity that comes with having to interpret tax provisions that are cross-referenced in nature in respect to the supply of the goods consisting of a fixed property and options available within the Act. For example, a small or medium enterprise which is a property investor buys a hybrid-use property where a ground floor area of the property is mainly used for a commercial purpose and the rest of a property is used as residential accommodation. It is the experience of this author that:

- Some small and medium enterprises do not consult accountants when acquiring fixed properties while some of the transferring attorneys are not tax practitioners. Therefore, the transferring attorneys may not be inclined to provide tax advisory services on the property transaction to structure the transaction in a tax-efficient way.

- The transferring attorneys will likely receive an offer to purchase that is already signed by both the seller and purchaser. The transferring attorneys will likely implement what has been agreed upon by both the seller and purchaser.

Expert advice may be needed on how best to structure a mixed-use property transaction to ensure the transaction is structured in the most tax-efficient way possible. Due to a lack of sufficient knowledge, a small or medium enterprise may not be aware that such a transaction can be concluded as a zero-rated transaction (s 11(1)(*e*) of the Value-Added Tax Act). Where a supply is to a registered vendor of an enterprise or part of an enterprise which is capable of separate operation where the supplier and recipient have agreed in writing that the supply of this enterprise or part is disposed of as a zero-rated transaction in terms of s 11(1)(*e*) of the Value-Added Tax Act rather than acquiring such a property as a normal transaction where the value-added tax is applicable at the standard rate of 15% in terms of s 7(1) of the Value-Added Tax Act, the zero-rating in s 11(1)(e) of the Value-Added Tax Act will apply. This property investor will likely result in paying the value-added tax by concluding the transaction where the standard rate is levied while the investor could have managed the cash flow better by concluding a transaction as a zero-rated one because the purchaser did not seek expert advice on how best to structure the transaction in a tax-efficient way.

4.3.5 No deduction of input tax unless certain requirements are met

Section 16(2) of the Value-Added Tax Act states that no deduction of input tax shall be made in terms of the Value-Added Tax Act in respect of supply of goods or services, the importation of any goods or any other deduction, unless a taxpayer has the required supporting documents; for example, a vendor at the time of making a deduction must have a tax invoice in respect of supply of goods or services that were supplied in accordance with s 20 of the Act and are held by the vendor, making that deduction at the time that any return is furnished (s 16(2)(a) of the Value-Added Tax Act). The requirement of s 16(2) of the Value-Added Tax Act is a fair and reasonable one, given that the accounting systems that are being used currently comply with the requirements of s 20 of the said Act, for example:

- A supplier being a registered vendor, making a taxable supply to a recipient, must within 21 days from the date of the supply, issue a tax invoice containing such particulars as are specified in s 20 of the Value-Added Tax Act.
- A tax invoice shall be in the Republic's currency and shall contain particulars, for example, the words "tax invoice", "VAT invoice" or "invoice", the name, address and VAT registration number of the supplier, the name, address and, where the recipient is a registered vendor, and the VAT registration number of the recipient.

It is the experience of this author that some small and medium enterprises may deduct an input tax using the quotation or pro forma invoice, not the tax invoice. However, these enterprises will not be complying with s 16(2) of the Value-Added Tax Act and possibly the said enterprises may incur an understatement penalty (s 222(1) of the Tax Administration Act).

4.4 Returns and payments of tax

4.4.1 Returns and payments of tax

Every vendor shall submit a return to the Commissioner within the period ending on the 25th day of the first month, commencing after the end of a tax period relating to such vendor when a payment of the value-added tax must be made to the Commissioner (s 28(1) of the Value-Added Tax Act). Where a return is submitted to the Commissioner through SARS e-filing and a payment is made electronically, the return and payment can be made on the last business day of the month (para (iii) of the proviso to the s 28(1) of the Value-Added Tax Act).

Small and medium enterprises must submit a return to the Commissioner that contains such information as required for the purpose of calculation of tax in terms of s 14 or 16 (s 28(1)(*b*) of the Value-Added Tax Act). Section 14(1) of the Value-Added Tax Act states that where tax is payable in terms of s 7(1)(*c*) of the Act in respect of the supply of the imported services, the recipient shall within 30 days of the date referred to in s 14(2) of the Act, obtain, complete and retain the form prescribed by the Commissioner and calculate the tax payable on the value of the imported services at the rate in force on the date of supply of the imported services, and pay such tax to the Commissioner. Section 16(1) of the Value-Added Tax Act states that the tax payable by a vendor shall be calculated in accordance with the provisions of s 16 of the Value-Added Tax Act by the vendor in respect of which he is registered or is required to be registered in terms of s 23 of the Value-Added Tax Act.

Every vendor must calculate the amounts of tax in accordance with section 14 or 16 of the Act and pay the tax payable to the Commissioner or calculate the amount of any refund due to them (s 28(1)(*b*) of the Value-Added Tax Act).

Small and medium enterprises must know that a payment can be made by the end of last business day of the month in which the 25th day falls if made through a debit order, or if submission of a return and payment of the tax is made electronically (s 28(1) of the Value-Added Tax Act), to avoid incurring tax penalties for not paying tax that may be due in terms of s 39(1) of the Value-Added Tax Act. The failure to submit a return and pay tax due in terms of s 28(1) of the Value-Added Tax Act could negatively affect small and medium enterprises, where failure to submit a return and pay tax that is due could mean that the said enterprise's non-compliance referred to in terms of s 210(2) of the Tax Administration Act will not be rectified; as a result, such an enterprise will not be able to do business with entities that require that tax compliance status must be up to date to do business with them.

Where applicable, value-added tax payable shall be paid to the Commissioner within prescribed deadlines (s 28(1) of the Value-Added Tax Act), which adds to the administrative burden because some small and medium enterprises may be required to submit six value-added tax returns and payments per year (see section 4.4.2 below), adding to the administration burden created by the Value-Added Tax Act, though in some cases it may be reasonable given that the enterprise's transactions may be repetitive, but in other cases the enterprise's transactions may not be repetitive in nature, thereby adding to the complexity created by the Act.

A value-added tax return must be submitted by a vendor irrespective of whether or not the value-added tax is payable, or a refund is due in respect of that tax period (s 28(2) of the Value-Added Tax Act).

Due to lack of awareness and lack of sufficient knowledge, small and medium enterprises which have not provided taxable supplies in a particular tax period may assume for this reason that they do not have to submit the value-added tax return. However, non-submission of the value-added tax return can result in administrative tax penalties levied against them (s 210 of the Tax Administration Act).

4.4.2 Tax period

The Commissioner can after an application by a person for registration as a vendor decide which tax period category such a person will fall under (section 27(1) of the Value-Added Tax Act). Different tax periods that a vendor could fall under include of the following:

> "**Category A**" means the category of vendors whose tax periods are periods of two months ending on the last day of the months of January, March, May, July, September and November of the calendar year;
> "**Category B**" means the category of vendors whose tax periods are periods of two months ending on the last day of the months of February, April, June, August, October and December of the calendar year;
> "**Category C**" means the category of vendors whose tax periods are periods of one month ending on the last day of each of the 12 months of the calendar year;
> "**Category D**" means the category of vendors whose tax periods are periods of six months ending on the last day of February and August of the calendar year or, where any vendor falling within this category makes written application thereof, on the last day of such other months as the Commissioner may approve;
> "**Category E**" means the category of vendors who tax periods are periods of twelve months ending on the last day of their "year of assessment" as defined in section 1 of the Income Tax Act or where any vendor falling within this category makes written application thereof, on the last day of such other month as the Commissioner may approve ...

The Commissioner shall determine if the vendor falls within either Category A or Category B and notify the vendor (s 27(2)(*b*) of the Value-Added Tax Act). Small and medium enterprises that fall within Category A and Category B must submit the value-added tax return every two months (s 27(1) of the Value-Added Tax Act), equalling six times in a year which is more frequent submission compared to Category D and

Category E, which could lead to more time spent, adding to an administrative burden leading to an increase in compliance costs. An obligation to submit returns every two months as required in terms of Category A and Category B could lead to excessive time pressure and administrative burden, which could lead in turn to calculation errors in a return, resulting in tax penalties in terms of s 39(1) of the Value-Added Tax Act.

Some small and medium enterprises may experience a cash flow challenge resulting from the two month tax period, where enterprises are required to furnish a return to the Commissioner at the end of 25th day of the first month commencing after the end of a tax period (compared to those with less frequent returns such as Category D, which requires a submission of a return twice a year). A vendor who has customers with a payment term of over 90 days may experience a cash flow challenge because the reality of some business practices is inconsistent with value-added tax provisions. Such vendors will only receive payments when customers pay after 90 days while, because of the tax provisions in terms of s 16(4)(i) of the Value-Added Tax Act, they will be required to account for an output tax when the invoice is issued, which will not be in the same tax period as the tax period in which the customers pay the invoices. However, although the input tax deduction in relation to creditors may provide some measure of relief, it may not be enough in some cases.

The two months tax period requirements to furnish a return to the Commissioner as stated in Category A and Category B in terms of s 27(1) of the Value-Added Tax Act could lead to administrative burden due to a need to prepare, submit and pay the value-added tax every two months. This process is time-consuming compared to those small and medium enterprises in Category D and Category E. Category D and E can potentially be applied to a limited number of small and medium enterprises, due to the criteria to be discussed in detail below in this section.

Small and medium enterprises will know which tax period category relates to them and the required frequency of a return submission required in terms of that category once the Commissioner has notified the said enterprises in terms of s 27(2)(*b*) of the Act. In Category A and Category B, the administrative burden is exacerbated by a lack of trained staff among small and medium enterprises as discussed above. As a result, the value-added tax return could be submitted late or not submitted at all. The late submission or non-submission of the returns could result in time costs due to more time spent fixing the error with SARS, or in some case tax penalties levied, leading to cash flow shortages.

A vendor will fall within the Category D if:

- A vendor's enterprise comprises solely agricultural or pastoral or other farming activities and the value of taxable supplies has in the period of 12 months ending on the last day of any month of the calendar year not exceeded R1,5 million;
- A vendor does not fall within Category C and made a written application to the Commissioner to be placed under Category D (s 27(4)(*a*) of the Value-Added Tax Act); or
- If a vendor who is a micro business in terms of the Sixth Schedule has made an application to be placed under Category D to the Commissioner in such form that the Commissioner may prescribe and the Commissioner has directed that with effect of the commencement date or such later date as may be appropriate, the vendor will fall within the Category D (s 27(4)(*b*) of the Value-Added Tax Act).

Category D will, by its requirement related to the total value of taxable supplies not exceeding R1,5 million in the preceding 12 month period, will exclude most of the small and medium enterprises discussed in this report because, as noted in section 2.5, most have a total value of taxable supplies greater than R1,5 million.

A vendor who falls under the Category E will either be a company or a trust fund that carries on an enterprise that is solely engaged in one or more of the activities of letting of fixed property or the renting of movable goods, or an administration or management of companies that are connected persons in relation to the vendor (s 27(4A)(*a*) of the Value-Added Tax Act). Section 27(4A)(*a*) and (*b*) of the Value-Added Tax Act will exclude most of the small and medium enterprises discussed in this report as a result of its narrow qualifying requirements, and as a result, Category E will most likely not be relevant to most small and medium enterprises. However, Category E requires that a vendor which falls within the category must submit a return only once in a calendar year.

4.5 Record keeping compliance

Section 55(1) of the Value-Added Tax Act states that the following records and documents must be kept by a vendor:

(*a*) a record of all goods and services supplied by or to the vendor showing the goods and services, the rate of tax applicable to the supply and the suppliers or their agents, in sufficient detail to enable the goods and services, the rate of tax, the suppliers or the agents to be readily identified by the Commissioner, and invoices, tax invoices, credit notes, debit notes, bank statements, deposit slips, stock lists and paid cheques relating thereto: Provided that a vendor's records do not have to show the rate of tax where the vendor has been authorised by the Commissioner to calculate the tax payable by him in accordance with a method prescribed by regulation, as contemplated in section 16(1);

(*aA*) a record of all importations of goods and documents relating thereto as contemplated in section 16(2)(*d*);

(*aB*) any documentary proof required to be obtained and retained in accordance with section 16(2)(*f*) or (*g*);

(*b*) the charts and codes of account, the accounting instruction manuals and the system and programme documentation which describe the accounting system used in each tax period in the supply of goods and services;

(*c*) any list required to be prepared in accordance with section 15(9); and

(*d*) any documentary proof required to be obtained and retained in accordance with section 11(3).

Section 55(1) of the Value-Added Tax Act requires vendors to maintain records and documents, though some of these records are the same as the accounting records for other taxes such as income taxes. There are administration obligations added by s 55 (1) of the Act. For example, s 55(1)(*c*) of the Value-Added Tax Act requires that a list referred to in s 15(9) of the Value-Added Tax Act must be kept. A vendor is required, where there is a change in the basis of accounting, to prepare a list of debtors and creditors showing the amount owed to that vendor and the amount owing to the creditors by such a vendor as at the end of the tax period immediately before the said changeover period (s 15(9) of the Value-Added Tax Act). In addition, s 55(1)(*d*) Value-Added Tax Act states that any documentary proof required to be obtained and retained in accordance with s 11(3) of the Act must be kept. Where a rate of zero percent has been applied by such a vendor under the provisions of s 11 of the Act, such a vendor shall obtain and retain such documentary proof substantiating the vendor's entitlement to apply the said rate under those provisions as is acceptable to the Commissioner (s 11(3) of the Value-Added Tax Act). As a result of the abovementioned examples of administrative obligations, and given various types of taxes that small and medium enterprises have to comply with, s 55(1) of the Value-Added Tax Act will add to the administrative burden faced by small and medium enterprises.

Section 55(1) of the Value-Added Tax Act adds more to the administration burden, resulting in tax complexity, because more records are required to be kept as discussed above, which is against the principle of tax simplification. The American Institute of Certified Public Accountants (1992, p. 8) also states that record keeping required over and above the needs of financial books and records add to record-keeping burdens, which is against the principle of tax simplification.

Small and medium enterprises must maintain records as required in terms of s 20(8) of the Value-Added Tax Act where the supply consists of second-hand or repossessed goods, or where there is a surrender of goods under an instalment credit agreement as contemplated in s 8(10) of the Act. The latter states that a supply of such goods shall be deemed to be made by the debtor under such instalment credit agreement to the person exercising his or her right or obligation of possession under the instalment credit agreement, and where the debtor is a vendor, the supply shall be deemed to be made in the course or furtherance of the vendor's enterprise, unless such goods did not form part of the assets held or used by the vendor for the purposes of the vendor's enterprise (s 16(2)(*c*) of the Value-Added Tax Act).

4.6 Conclusion

As discussed in section 4.2.1 and 4.2.3 of this report, the knowledge required to register for the value-added tax may be complex in some cases where there are special tax provisions for small and medium enterprises which may be supplying student accommodation. The registration compliance requirements to register as a vendor state that a person must register as a vendor at the end of any month, where total value of taxable supplies made by that person in the period of 12 months ending at the end of that month, has exceeded R1 million in the course of carrying on all enterprise as discussed in section 4.2.4. The registration process may contribute to an increase in compliance costs due to the need for bookkeeping skill and time, in order to be able to comply with the requirements where the vendor will have to track that the total value of taxable supplies made, even if that person has exceeded the R1 million threshold at the end of any month in the period of 12 months ending at the end of that month or not (s 23(1) of the Value-Added Tax Act). Due to lack of bookkeeping skill, even when some of the small and medium enterprises may have hire external expert support, if the tracking of whether the R1 million threshold is met is not is monitored, and in cases when it is discovered much later than the date on which the R1 million threshold was reached, that the R1 million threshold was exceeded, it can lead to tax penalties in terms of s 39(1) of the Value-Added Tax Act because of non-compliance with s 23(1) of the Act. The compliance requirements may be complicated in certain circumstances. For example, a person must know that where the R1 million threshold was exceeded or would likely have been exceeded as a result of the occurrence of specific events, such as any cession of, or any substantial and permanent reduction in the size or scale of, any enterprise carried on by that person. In this case, the vendor shall not be deemed to have exceeded, or be likely to exceed, the R1 million as discussed in section 4.2.5 of this report (s 23(1) of the Value-Added Tax Act).

To be able to calculate the value-added tax payable as discussed in section 4.3 of this report, bookkeeping skill is required. A taxpayer is required to have a knowledge of special provisions that may be applicable to their line of business, such as those in student accommodation where commercial accommodation is supplied together with domestic goods and services for an inclusive charge for an unbroken period exceeding 28 days. The consideration in money is deemed to be 60 percent of all-inclusive charge (s 10(10) of the Value-Added Tax Act) as discussed in section 4.3.2. Due to the fact that some sections of the legislation cross-reference sections as discussed in section 4.3.4, it contributes to the complexity of dealing with value-added tax.

There is an inconsistency in the compliance requirements where a vendor who acquires a fixed property will be able to deduct an amount of input tax in respect of the acquisition of the fixed property against the sum of the amounts of output tax in the tax period where registration of the fixed property is effected at the deeds registry (s 16(3)(*a*)(ii)(*bb*)(A) of the Value-Added Tax Act) as compared to where output tax is accounted for on the supply of the fixed property, which will occur when payment is made (s 16(4)(*a*)(ii) of the Value-Added Tax Act) as discussed in section 4.3.4, related to time of supply, which contributes to cash flow challenges.

As discussed in section 4.4 of this report, the compliance requirements related to submission of a return and making of payment of tax is reasonable. However, there are areas that are specific to some of the vendors which may add an administrative burden to them, due to how frequently these enterprises have to submit returns as compared to other small and medium enterprises as discussed in section 4.4.1 above.

Tax period categories, for example, Category A and Category B, discussed in section 4.4.2 of this report, add to an increase in the administrative burden for some of the vendors because of a need to submit value-added tax returns, more so than other categories such as Category D (s 27(1) of the Value-Added Tax Act).

Record keeping compliance requirements as discussed in section 4.5 of this report are reasonable, even though there are some cases where an administrative obligation is created for vendors, for example, where a vendor has to prepare a list of creditors and debtors with the amount owed to such vendor by debtors and the amount owing to the creditors by the vendor at the end of the tax period when a change of accounting basis took place.

CHAPTER 5 - EMPLOYEES' TAX

5.1 Introduction

In this chapter, the report considers the knowledge required, compliance requirements and complexity of the employees' tax in relation to small and medium enterprises in South Africa in these four scenarios: registration, calculation, returns and record keeping.

Employees' tax is the tax type that an employer is required to deduct or withhold from employees' remuneration and pay it over to SARS (para 2(*a*)(*b*) of the Fourth Schedule). SARS (n.d. 2.) stated that the process involved in deducting or withholding the employees' tax from employees' remuneration is commonly referred to as PAYE. Even though the term 'employees' tax' used in the tax legislation differs from 'PAYE', it is a long-established difference that employers are now familiar with that should cause little confusion.

5.2 Registration

5.2.1 Knowledge

Every person who is an employer shall apply to the Commissioner for registration in terms of Chapter 3 of the Tax Administration Act, provided the employer has an employee who is liable for normal tax (para 15(1) of the Fourth Schedule). The requirements of para 15(1) of the Fourth Schedule mean that a person would firstly have to know if he or she qualifies as an employer, if the person hired is an employee or not and thereafter if an employee is liable for normal tax. The employer would have to know that should any of its employees be liable for normal tax, he or she must register as an employer with the Commissioner; and if no employee is liable for normal tax, he or she will not be obliged to register as an employer with the Commissioner.

The definition of 'employer' in para 1 of the Fourth Schedule reads as follows:

> any person (excluding ...) who pays or is liable to pay to any person any amount by way of remuneration …

An employer must know what 'remuneration' is as defined in para 1 of the Fourth Schedule. The definition of 'employer' prescribes that the payment of an amount of remuneration need not to have taken place as long as the employer is liable to pay such amount to the employee.

Employees' tax that must be deducted by the employer is determined in terms of various paragraphs of the Fourth Schedule as discussed below. For example, the Commissioner may prescribe the deduction tables from time to time applicable to various classes of employees and the manner in which such deduction tables shall be applied (para 9(1)(*a*) and (*b*) of the Fourth Schedule). The deduction tables referred to in para 9(1)(*a*) of the Fourth Schedule have a remuneration threshold. For example, for the 2025 year of assessment the remuneration threshold is R95 508, which means that an employee who earns equal to or less than this amount, will not be subjected to employees' tax (SARS (2024b). Confusion can arise, however, where for a small business owner with few employees earning different amounts of remuneration, the employer may not be aware of the remuneration threshold, and because of lack of awareness, the employer may not be sure when he must register with the Commissioner as an employer. Confusion can also arise in a scenario where a small business owner compares his situation with that of his fellow small business owner with more employees than him, but who is not registered as an employer due to his employees' earning remuneration below the said threshold whereas the first small business owner's employees are earning above the prescribed remuneration threshold. He could be thinking that because his fellow small business owner is not registered as an employer, he also does not have to register as an employer for the employees' tax purposes (para 15(1) of the Fourth Schedule). Not ensuring that an employer is registered as an employer and deducting the employees' tax as required is a dangerous act because non-compliance will result in a percentage-based penalty levied for not submitting returns for each month that an employer fails to submit a complete return (para 14(6) of the Fourth Schedule).

A person shall register with the Commissioner within a period provided for in a tax act or if no period is provided for, within 21 business days of becoming obliged to do so (s 22(2)(*a*) of the Tax Administration Act). Where a person does not register with the Commissioner within a period provided in a tax act or within 21 business days where applicable as envisioned in s 22(2)(*a*) of the Tax Administration Act, that person will be non-compliant with the tax provisions, and will then be subject to a penalty (s 210(1) of the Tax Administration Act). Section 22(2) of the Tax Administration Act further states registration requirements that a person applying must comply with, for example:

(*a*) apply for registration within the period provided for in a tax Act or, if no such period is provided for, 21 business days of so becoming obliged or within the further period as SARS may approve in the prescribed form and manner;

(*b*) apply for registration for one or more taxes or under section 26 (3) in the prescribed form and manner; and

(*c*) provide SARS with the further particulars and any documents as SARS may require for the purpose of registering the person for the tax or taxes or under section 26 (3).

One must be aware that when applying for registration of a particular tax type that SARS has prescribed how each type of tax must be applied for (s 22(2)(*b*) of the Tax Administration Act). Any changes on how SARS requires an application for registration for a particular type of tax to be made may result in an increase or decrease in compliance costs for the taxpayers registering for the first time, depending on whether the new application processes are more or less complex.

SARS may approve a period within which a person must register as an employer other than the stated 21 business days in terms of s 22(2)(*a*) of the Tax Administration Act. Therefore, a person must know that the taxpayer can request SARS to prescribe the time within which the taxpayer must register as an employer.

It is the experience of this author that a person will register as an employer through SARS e-filing system or at the SARS branch. The person will be required to know how to use the SARS e-filing system and register for it before he or she can register as an employer through the system. However, small and medium enterprises are known to lack trained staff to manage tax compliance affairs (Naicker and Rajaram (2018, p. 100) which may act as an obstacle to registration as employers on the SARS e-filing system. SARS provides guidelines on how to navigate e-filing system in relation to the registration as an employer (SARS, 2024g). This author has in practice experienced that SARS provides support either at its branches or virtually for the taxpayers who may struggle to register for SARS e-filing system (SARS, n.d.4).

5.2.2 Compliance

As previously stated in section 4.1.3 of this report, small and medium enterprises are known to lack trained staff to manage tax compliance (Naicker and Rajaram, 2018, p. 100). A lack of knowledge could potentially lead to penalties levied against an employer for non-compliance, for example, not registering as an employer while obliged to do so and in some cases, an expert may be engaged to assist with registration as an employer with the Commissioner, thereby resulting in an increase of compliance costs.

A person who has not yet submitted all required documents and particulars in relation to an application for registration to SARS might be considered to have not applied for registration to SARS until that person has done so (s 22(4) of the Tax Administration Act). Small and medium enterprises are required to know what the required documents are when applying for registration and if all required particulars and documents have been provided to SARS (s 22(4) of the Tax Administration Act).

Section 22(5) of the Tax Administration Act states that SARS may register a person for one or more types of taxes as is appropriate under circumstances where a person is obliged to register with SARS under a tax act. Section 26(3) of the Tax Administration Act states that the Commissioner may by public notice require a person to apply to register to submit a return in terms of s 26(1) of the Tax Administration Act which states that the Commissioner may by public notice, at the time and place and by the due date specified, require a person who employs another person to submit a return by the date specified in the notice. Section 26 (1) and (3) of the Tax Administration Act prescribes that persons, including small and medium enterprises, must know that if these enterprises employ a person and are not registered with SARS, the said enterprises may by a public notice issued by the Commissioner be required to submit a return and equally so to register with SARS. Section 22(5) of the Tax Administration Act implies that a person is required to know that he or she could be registered for taxes by SARS where he or she is obliged to register and failed to do so. Sections 22(5) and 24(2) of the Tax Administration Act present a challenge that a person might not after registration for tax by SARS be aware of the registration status because the legislation appears not to provide for the sending of a notice of registration by SARS and as such, the person might not comply with subsequent compliance requirements, for example, a need to submit tax returns of a particular tax type, for which he or she has been registered by SARS and so could potentially incur tax penalties because of being non-compliant.

However, it is the experience of this author that:

- SARS does sometimes provide the tax reference number and other times it appears that taxpayers do not get the notification of their tax reference numbers upon registration for a particular tax type.
- SARS does in some cases send out a notice of demand that a registered taxpayer should submit tax returns.
- Sometimes by the time SARS sends out a notice of demand that a registered taxpayer should submit returns, the said taxpayer would have incurred an administrative penalty for noncompliance (s 210(1) of the Tax Administration Act).

5.2.3 Complexity

A person shall apply to the Commissioner for registration as an employer in accordance with Chapter 3 of the Tax Administration Act which prescribes how a person must register with SARS (para 15(1) of the Fourth Schedule). A person shall upon being obliged to register, apply for registration within a period provided for in a tax act or if no such period is provided, 21 business days of so becoming obliged (s 22(2) of the Tax Administration Act). A small or medium enterprise shall register as an employer with the Commissioner in terms of s 22(2) of the Tax Administration Act within 21 business days from the date of the said enterprise being an employer, which will be when an enterprise has a person employed who is paid, or the enterprise is liable to pay, remuneration, and such a person is liable for normal tax (para 15(1) of the

Fourth Schedule). The cross-referencing of legislation sections provided by para 15(1) of the Fourth Schedule is another cause of complexity. As previously discussed in section 4.3.3 of this report, the interactions between sections and use of the cross-referencing create complexity (American Institute of Certified Public Accountants (1992, p. 8).

Section 22(1) of the Tax Administration Act refers to registration with SARS (the organisation) while para 15(1) of the Fourth Schedule refers to applying for registration with the Commissioner (the person). The inconsistency in the two provisions could be confusing for small and medium enterprises owners reading both provisions, particularly where a person lacks sufficient knowledge or has a low level of education, and these enterprises might not understand why one provision refers to a person, the Commissioner, and the other provision refers to SARS, the organisation. As previously discussed in the section 2.4.1 of this report, some small and medium enterprises owners do have low level of education (Myeko and Madikane, 2019, p. 8).

Any person who pays or is liable to pay to any person remuneration, is an employer as defined in para 1 of the Fourth Schedule, and such a person is liable for registration as an employer provided that one of the employees is liable for normal tax (para 15(1) of the Fourth Schedule). A person must know what remuneration is as a prerequisite to know if he/she is an employer or not. That person must then know if any of the employees is liable for normal tax which adds to complexity that creates an administrative burden because an employer may not know what other source of income an employee is earning outside of employment, which may make the employee liable for normal tax. Small and medium enterprises which have to ascertain whether to register as an employer will have to assess if the employee is liable for normal tax, but the employer will not ordinarily have access to all the information that influences if the employee is liable for normal tax, for example, if the employee is earning any other income other than that from the employer. However, SARS (2024c, p. 12) states that any business that pays **remuneration** to any of its employees that is above threshold for the year of assessment, must register with SARS for PAYE purposes. Therefore, it appears that SARS expects an employer to only consider the remuneration payable when ascertaining if the said employer should register as an employer or not, which is inconsistent with para 15(1) of the Fourth Schedule as discussed above.

In contrast to the registration for value-added tax as discussed in section 4.2.4 of this report, to know if a person must register as a vendor, bookkeeping skill is required to track the total value of taxable supplies to the value of R1 million, but for employees' tax purposes, to ascertain if an employee is liable for normal tax, one requires no bookkeeping skill. In addition, to register as an employer, there is no amount specified that must be exceeded other than that an employee must be liable for normal tax, in contrast to the total value of R1 million of taxable supplies for value-added tax registration. The differences between the registration requirements of the employees' tax and value-added tax may be reasonable but may add to the confusion to the small and medium enterprises and it may be out of this confusion that these enterprises are not registered for one of these taxes. Small and medium enterprises must know that when it comes to registering as a vendor, a time period of the preceding 12 months has to be considered at the end of any month, to ascertain if these enterprises are obliged to register as a vendor or not as compared to registration requirements as an employer. There is no time period to consider when ascertaining if an employer should register with SARS or not but one must register as an employer where there is an employee who is liable for normal tax and as a result, the difference may create confusion to small and medium enterprises which may be a reason some of these enterprises are not registered.

5.3 Calculations of the employees' tax

Every employer that is a resident of the Republic of South Africa or employer that is not a resident but conducts a business through a permanent establishment in the Republic of South Africa; or a representative employer, who pays or becomes liable to pay remuneration to any employee, shall deduct, or withhold an amount by a way of the employees' tax from remuneration amount (para 2(1) of the Fourth Schedule). The employees' tax is payable to the Commissioner within seven days after the end of the month during which the amount was deducted or withheld (para 2(1) of the Fourth Schedule).

To comply with para 2(1) of the Fourth Schedule, an employer will need to have some knowledge on what remuneration is. Paragraph 1 of the Fourth Schedule defines remuneration in the following terms:

> "remuneration" means any amount of income which is paid or is payable to any person by way of any salary, leave pay, wage, overtime pay, bonus, gratuity, commission, fee, emolument, pension, superannuation allowance, retiring allowance or stipend, whether in cash or otherwise and whether or not in respect of services rendered, including,

for example:

> (*a*)… ;
>
> (*b*) any amount required to be included in such person's gross income under paragraph (i) of that definition, excluding an amount described in paragraph 7 of the Seventh Schedule.
>
> (*b*A)…;
>
> (*c*)…;
>
> (*c*A) 80 percent of the amount of any allowance or advance in respect of transport expenses referred to in section 8(1)(b), other than any such allowance or advance contemplated in section 8(1)(b)(iii) that is based on the actual distance travelled by the recipient: Provided that where the employer is satisfied that at least 80 per cent of the use of the motor vehicle for a year of assessment will be for business purposes, then only 20 per cent of the amount of such allowance or advance must be included;
>
> (cB) 80 percent of the amount of the taxable benefit as determined in terms of paragraph 7 of the Seventh Schedule: Provided that where the employer is satisfied that at least 80 per cent of the use of the motor vehicle for a year of assessment will be for business purposes, then only 20 percent of such amount must be included;…

The definition of 'remuneration' in para 1 of the Fourth Schedule is so broad that it may result in a compliance challenge for some of the small and medium enterprises. It is the experience of this author that some small and medium enterprises may not be aware that items such as travel allowances have consequences for employees' tax. Further, the enterprises may not be aware of SARS guidelines on employees' tax in relation to what these enterprises should be deducting or withholding and paying the employees' tax on to the Commissioner. These enterprises may incur a percentage-based penalty (para 14(6) of the Fourth Schedule) imposed by the Commissioner due to non-compliance, which is an issue with some of these enterprises. In some cases, for example, those small business owners who conduct a trade through companies of which they are directors and also employees, buy cars using their companies' money and register such cars in the company names, yet use such cars for private purposes

– while still not accounting for the employees' tax on taxable benefits referred to in a subparagraph (*b*) of the definition of 'remuneration' of the Fourth Schedule.

As stated immediately above, to comply with para 2(1) of the Fourth Schedule, an employer will need to have some knowledge on what remuneration is and have the numerical skill to calculate the employees' tax as per different provisions provided for under paras 9, 10 and 11 of the Fourth Schedule or s 95 of the Tax Administration Act as discussed below. For example, the Commissioner may from time to time prescribe deduction tables applicable to such classes of employees, as the Commissioner may determine and the amount of the employees' tax to be deducted from an amount of the remuneration shall be determined in accordance with such tables (para 9 of the Fourth Schedule). The employer must know that there are scenarios where circumstances may warrant that the employer applies to the Commissioner for a variation from how the employees' tax is to be determined (para 9 of the Fourth Schedule) and that the said employer has a right to make such application to the Commissioner.

The Commissioner must be satisfied that the said circumstances warrant a variation of the basis on how the employees' tax is to be determined in terms of para 9 of the Fourth Schedule (para 10(1) of the Fourth Schedule). The Commissioner may, upon being satisfied that the circumstances warrant variation of the basis provided in para 9 of the Fourth Schedule for the determination of the employees' tax, agree with such an employer as to the basis of determination of the said amounts to be applied, and the amounts to be deducted or withheld by that employer in terms of para 2 of the Fourth Schedule (para 10(1) of the Fourth Schedule). Paragraph 10(2) of the Fourth Schedule states that an agreement between the Commissioner and employer on the basis of the determination of the amounts of employees' tax to be deducted or withheld from remuneration of employees shall remain in force indefinitely until either the Commissioner or the employer give notice for termination with three months' notice period and the agreement shall be considered terminated after the expiry of that period.

The Commissioner may, having regard to the circumstances of the case, issue a directive to the employer to refrain from deducting or withholding any amount under para 2 of the Fourth Schedule by way of the employees' tax from any remuneration due to any employee of that employer; or the Commissioner may issue a directive to the employer to deduct or withhold by way of employees tax from the remuneration, in terms of para 2 of the Fourth Schedule, a specified amount or an amount to be determined in accordance with a specified rate or scale (para 11(*a*) of the Fourth Schedule).

In addition, SARS may make an original, additional, reduced or jeopardy assessment based in whole or in part on an estimate, if the taxpayer does not submit a return; or does submit a return or relevant material that is incorrect or inadequate; or does not respond to a request for relevant material (s 95(1) of the Tax Administration Act).

There is a prescribed deadline of seven days after the end of the month following which the employees' tax has been deducted or withheld, by which the employees' tax shall be paid to the Commissioner. This adds to the administrative burden, which in turn adds to the complexity that there must be an awareness of the deadline that must be met (para 2(1) of the Fourth Schedule). The time constraints to meet multiple deadlines of different types of taxes, for example, where the value-added tax, provisional tax and employees' tax returns are due for submission in that specific period may lead to errors committed in a submission of returns to the Commissioner because of a lack of trained staff to manage tax compliance affairs. As discussed in section 5.2.2 of this report, small and medium enterprises are known to lack trained staff to manage tax affairs compliance (Naicker and Rajaram, 2018, p. 100).

The Commissioner may from time to time prescribe deduction tables applicable to such classes of employees as the Commissioner may determine, and the manner in which such deduction tables shall be applied, and the amount of the employees' tax to be deducted from any amount of remuneration shall be determined in accordance with such tables (para 9(1)(*a*) and (*b*) of the Fourth Schedule). The changed deduction tables are published in the *Government Gazette*, on the SARS website and in the relevant SARS employees' tax documents, for example, 'Guide for Employers in respect of Employees' Tax'. Small and medium enterprises have to familiarise themselves with changes to the deduction tables, which arise (reasonably) because of inflation adjustments. However, this adds to the administrative burden nonetheless.

The effect of change of the deduction tables by the Commissioner from time to time in terms of para 9(1) of the Fourth Schedule may add to complexity because whenever there is a change in deduction tables, small and medium enterprises will have to familiarise themselves with new deduction tables that contains new amounts and apply them. It is the experience of this author that the changes that happen in the deduction tables are those of the amounts rather than the principle of how the employees' tax is to be calculated.

There are four types of deduction tables referred to in para 9(1) of the Fourth Schedule, as stated by SARS (2024), for example:

- Weekly Tax Deduction Tables
- Fortnightly Tax Deduction Tables
- Monthly Tax Deduction Tables
- Annual Tax Deduction Tables

It is reasonable that there are different deduction tables because some of the small and medium enterprises may be paying employees on a weekly, fortnightly or monthly basis. Although annual deduction tables may assist these enterprises to estimate the employees' tax on annual payments, for example, the annual bonus, the method used to calculate the employees' tax on annual payments is fairly complex and requires numerical skill and knowledge, for which small and medium enterprises are known to lack trained staff to manage tax affairs compliance (Naicker and Rajaram, 2018, p. 100). The differing deduction tables will mean that the employees' tax might be deducted or withheld in accordance with how the remuneration is paid by the employer. As a result of the existence of different deduction tables, some of these enterprises may make mistakes due to human error and use incorrect deduction tables.

Paragraph 9(6) of the Fourth Schedule states that:

> there must be deducted from the amount to be withheld or deducted by way of employees' tax as contemplated in paragraph 2 the amount—
>
> (*a*) of the medical scheme fees tax credit that applies in respect of that employee in terms of section 6A; and

(*b*) where the employee is entitled to a rebate under section 6 (2) (b), of the additional medical expenses tax credit that applies in respect of that employee in terms of section 6B (3) (*a*) (i),

if—

(i) the employer effects payment of the medical scheme fees as contemplated in section 6A (2) (*a*); or

(ii) the employer does not effect payment of the medical scheme fees as contemplated in section 6A (2) (a), at the option of the employer, if proof of payment of those fees has been furnished to the employer.

Small and medium enterprises must deduct the medical scheme fee tax credit that applies in respect of an employee from the employees' tax being deducted or withheld for that employee.

These enterprises must know which medical scheme tax credits are applicable for which employee, and how the medical scheme tax credits are determined for each one, which adds complexity to the administrative burden. Each employee will have their own number of dependants compared to the others, which must be taken into account when determining what medical scheme fee credits are applicable to that employee (s 6A(2)(*b*)). Where the employer does not effect payment of the medical scheme fee in terms of para 9(6) of the Fourth Schedule, the option given to the employer to deduct the tax credit is reasonable since the employer can opt out where they do not have the administrative capacity to manage medical scheme fee payments made by the employees and to determine the fee tax credit for each employee. There is an inconsistency in that where the employer is the one effecting payment of the medical scheme fee, the employer does not have the option of not taking into account medical scheme fees tax credit, as compared to the scenario where the medical scheme fees are paid by the employee. In the latter instance, the employer has an option to not take into account the medical scheme fee tax credits which may lead to confusion as to when the employer has to take into account medical scheme fees tax credit and when this need not be taken into account.

Paragraph 11 of the Fourth Schedule states that the Commissioner may, having considered the circumstances of the case, issue a directive:

(*a*) to an employer authorising that employer—

(i) to refrain from deducting or withholding any amount under paragraph 2 by way of employees' tax from any remuneration due to any employee of that employer; or

(ii) to deduct or withhold by way of employees' tax from any remuneration in terms of paragraph 2, a specified amount or an amount to be determined in accordance with a specified rate or scale,

in order to alleviate hardship to that employee due to circumstances outside the control of the employee or to correct any error in regard to the calculation of employees' tax, or in the case of remuneration constituting commission or where the remuneration is paid or payable to a personal service provider and that directive must be complied with ...

It is reasonable that the Commissioner may issue a directive to the employer in terms of para 11, though this may lead to a further administrative burden, which in turn adds to complexity, in that the employer has to understand the directive and be able to calculate the employees' tax as per the directive. Human errors may happen due to the employer's employees not being knowledgeable and competent enough to deal with a directive in calculating such employees' tax. The result may be that incorrect employees' tax is deducted, or withheld and paid to the Commissioner, resulting in tax penalties in terms of para 6(1) of the Fourth Schedule incurred by the employer.

5.4 Employers to keep records and furnish returns

Paragraph 14(1) of the Fourth Schedule prescribes the nature of the records that an employer must keep and maintain in respect of all employees under his employment. Paragraph 14(1) of the Fourth Schedule states that:

In addition to the records required in accordance with Part A of Chapter 4 of the Tax Administration Act, every employer shall in respect of each employee maintain a record showing—

(*a*) the amounts of remuneration paid or due by him or her to such employee;

(*b*) the amount of employees' tax deducted or withheld from the amounts of remuneration contemplated in item (a);

(*c*) the income tax reference number of that employee where that employee is registered as a taxpayer in terms of section 67; and

(*d*) such further information as the Commissioner may prescribe,

> and such record shall be retained by the employer and shall be available for scrutiny by the Commissioner.

To comply with para 14(1) of the Fourth Schedule, record keeping systems will have to be implemented by the small and medium enterprises, though the record keeping systems are not solely used to comply with the employees' tax requirements but also other requirements, for example, the Unemployment Insurance Fund. Complying with the tax requirements will be a component cost of compliance with payroll record keeping, as required by applicable legislation, for example, the Unemployment Insurance Act 63 of 2001 (Republic of South Africa, 2001), as well as the Fourth Schedule of the Income Tax Act.

Paragraph 14(3) of the Fourth Schedule states when an employer should submit an employees' tax return to the Commissioner. Paragraph 14(3) of the Fourth Schedule states that:

> Every employer shall—
>
> (*a*) by such date or dates prescribed by the Commissioner by notice in the Gazette …
>
> or within such longer time as the Commissioner may approve, render to the Commissioner a return.

Where small and medium enterprises do not have trained staff to deal with tax compliance affairs as discussed in section 5.2.2 of this report, these enterprises may end up not submitting or submitting inaccurate returns, or not submitting such returns within the prescribed timelines. This in turn can lead to these enterprises incurring percentage-based tax penalties imposed by the Commissioner (para 14(6) of the Fourth Schedule). In order to comply with relevant provisions of the legislation and to avoid incurring tax penalties, small and medium enterprises should consider having their staff undergo suitable training, or consult an external expert.

Employers that fail to submit a complete return of the employees' tax to the Commissioner may incur a tax penalty that does not exceed 10 per cent of the total amount of the employees' tax deducted or withheld, or which should have been deducted or withheld by the employer from the remuneration of employees for the period a return was due to be submitted (para 14(6) of the Fourth Schedule). Paragraph 14(6) of the Fourth Schedule states that:

> If an employer fails to render to the Commissioner a complete return referred to in subparagraph (3) within the period prescribed in that subparagraph, the Commissioner may impose on that employer a penalty, which is deemed to be a percentage based penalty imposed under Chapter 15 of the Tax Administration Act, for each month that the employer fails to submit a complete return which, in total, may not exceed 10 per cent of the total amount of employees' tax deducted or withheld, or which should have been deducted or withheld by the employer from the remuneration of employees for the period described in that subparagraph.

Failure to submit a complete return as referred to in para 14(6) of the Fourth Schedule will lead to these enterprises being non-compliant. Small and medium enterprises may incur tax penalties because of non-compliance caused by not submitting the employees' tax returns (para 14(6) of the Fourth Schedule), read with chapter 15 of the Tax Administration Act which states in s 210(1) that SARS may impose penalty for non-compliance. Section 210(2) of the Tax Administration Act states that non-compliance is where there is non-compliance with an obligation that is imposed by or under a tax act and listed in terms of a public notice issued by the Commissioner.

A percentage-based penalty could be imposed on the employer as referred to in para 14(6) of the Fourth Schedule where a complete return is not submitted by that employer as required in terms of subparagraph (3), which states by when every employer shall render a return to the Commissioner. Small and medium enterprises which lack sufficient knowledge on how to prepare returns may incur the said percentage-based penalty. This penalty could negatively affect the business of such small and medium enterprises, because failure to pay it will mean that the affected enterprise is not compliant. This outstanding penalty amounts to an outstanding tax debt, as referred to in s 256(3)(*b*) of the Tax Administration Act, and as a result, these small and medium enterprises may not be able to do business with entities that require up-to-date tax compliance status to do business with them.

The Commissioner may impose the percentage-based penalty under para 14(6) of the Fourth Schedule on an estimate where the total amount of the employees' tax deducted or withheld is unknown (para 14(7) of the Fourth Schedule).

The estimated employees' tax may be incorrect, in turn resulting in a higher penalty imposed by the Commissioner than it would have been had the total amount of the employees' tax been known by the Commissioner. Though it may be reasonable that the Commissioner can use an estimate where the total amount of the employees' tax is unknown, an incorrectly estimated penalty may add to the financial challenges for the affected employers because they may have to pay a greater penalty or incur professional experts costs where these enterprises opt to hire an expert to lodge a tax dispute with the Commissioner in terms of s 104(1) of the Tax Administration Act. A taxpayer that is aggrieved by an assessment may object to it (s 104(1) of the Tax Administration Act).

A penalty that is found to have been imposed on an incorrectly estimated employees' tax after the actual total amount of the employees' tax is determined must be adjusted in accordance with the correct amount of the employees' tax with effect of the date of imposition of the penalty under subparagraph (6) read with subparagraph (7) of para 14 of the Fourth Schedule (Paragraph 14 (8) of the Fourth Schedule).

Paragraphs 14(7) and (8) provide an additional administrative burden where small and medium enterprises could find themselves spending time dealing with queries from the Commissioner. It is the experience of this author that dealing with, for example, an objection to an assessment referred to in s 104(1) of the Tax Administration Act and in general, is a specialist tax field. In order to avoid overly spending time dealing with the Commissioner, small and medium enterprises could consider using a tax practitioner who specialises in tax dispute resolution to assist with the provisions of the employees' tax, leading again to an increase in compliance costs.

5.5 Conclusion

As discussed in section 5.2.1, the knowledge required for registering as an employer can be challenging, given the need-to-know prescribed deadlines and how to calculate what is considered remuneration and when the employees' tax is payable.

The complexity of registration as an employer, as discussed in section 5.2.3 of this report, is increased because s 22(1) of the Tax Administration Act refers to registration with SARS (the organisation) while para 15(1) of the Fourth Schedule refers to applying for registration with the Commissioner (the person). The inconsistency in the two provisions could be confusing for small and medium enterprises owners reading both provisions, particularly where a person lacks sufficient knowledge or has a low level of education, and these enterprises might not understand why one provision refers to a person, the Commissioner, and the other provision refers to SARS, the organisation.

The complexity added to the registration requirements is further increased by the need of the employer to be aware of the prescribed deadlines and the need to know if an employee is liable for normal tax or not. The employer must register as such as soon as the employer has an employee that is liable for normal tax as discussed in section 5.2.3 of this report.

The fact that employees' tax and normal tax are not calculated the same way, even though employees' tax can be regarded as an advance payment on normal tax that is taken into account in calculating the normal tax due on assessment by a taxpayer may certainly add to the confusion. However, SARS (2024c, p. 12) states that any business that pays remuneration to any of its employees that is above threshold for the year of assessment must register with SARS for PAYE purposes. Therefore, it appears that SARS expects an employer to only consider the remuneration payable to its employees on ascertaining if the employer should register as an employer or not, which is inconsistent with para 15(1) of the Fourth Schedule as discussed above.

The compliance requirements of calculation of the employees' tax are complicated by a broad definition of what is considered remuneration for employees' tax calculation purposes, as discussed in section 5.3 of this report.

As discussed in section 5.4, small and medium enterprises that have incurred a penalty in terms of para 14(6) of the Fourth Schedule but have not paid it will not be compliant because such outstanding penalties will be an outstanding tax debt as referred to in s 256(3)(*b*) of the Tax Administration Act. As a result, they may not be able to do business with entities that require that tax compliance status must be up to date to do business with them.

As discussed in section 5.4 of this report, the compliance requirements for record keeping and submission of the employees’ tax returns is reasonable. Complying with the tax requirements will be a component cost of compliance with payroll record keeping, as required by applicable legislation, for example, the Unemployment Insurance Act 63 of 2001, as well as the Fourth Schedule of the Income Tax Act.

CHAPTER 6 – CONCLUSION

This research report identified and analysed the challenges in respect of tax knowledge required, tax compliance requirements, and tax complexity in respect of small and medium enterprises in South Africa. As discussed in this report, there are numerous challenges and some of those could be more onerous than others.

For example, phrases such as what are considered ‘abnormal circumstances’, or a ‘substantial and permanent reduction in the size or scale of any enterprise’ referred to in the proviso to s 23(1) of the Value-Added Tax Act, are not defined under the Value-Added Tax Act, resulting in a need to interpret phrases as discussed in section 4.2.5 of this report. The National Small Enterprise Amendment Act and Income Tax Act have different definitions of what could meet the requirements of small and medium enterprises as referred to in this report, for example, ‘small business corporations’ in terms of s 12E(4)(*a*) and 'small enterprise' in s 1(1) of the National Small Enterprise Amendment Act, as discussed in section 2.1 of this report. The existence of the different definitions of what could meet the requirements of small and medium enterprises, in various pieces of South African legislation as discussed in detail in section 2.1 of this report, presents a major challenge for small and medium enterprises. These inconsistencies also present a challenge arising from the inconsistencies in application of what is considered a small enterprise, as discussed in section 2.2.1 above. While not a challenge related to tax knowledge, tax compliance or tax complexity, the inconsistency when the legislation is applied presents a major challenge for growth and development of small and medium enterprises because these enterprises may be excluded from either private or public support programmes (see section 2.2.1 above).

As identified when discussing tax provisions in this report, certain challenges that may add to an increase in compliance costs include:

- The differing registration requirements, for example, for employees’ tax and value-added tax purposes as discussed in section 5.2.3.

- Value-added tax registration processes being cumbersome as discussed in section 4.2.1.

Small and medium enterprises may suffer loss of a business due to delays in the value-added tax registration as discussed in section 4.2.1.

As discussed in section 5.2.3 above, the Income Tax Act has different registration requirements for the employees' tax in terms of para 15(1) of the Fourth Scheule to the registration requirements for the value-added tax in terms s 23(1) of the Value-Added Tax Act. As a result, this may present an administrative burden for small and medium enterprises having to know and administratively deal with these differing registration requirements of different types of taxes. Value-added tax registration has always been one of the more cumbersome processes for taxpayers (Baker MacKenzie, 2023). A cumbersome registration process may result in an increase in compliance costs for small and medium enterprises where some of the owners will have to take a day off work to attend to the registration processes or in some cases, hire an expert to assist with the registration process.

Due to the cumbersome registration process for value-added tax, some small and medium enterprises may suffer loss of business, where lack of value-added tax registration disadvantages them, as registered entities may prefer doing business with other entities that are registered for it. Many large businesses and government departments may require that their suppliers of goods or services be registered as value-added tax vendors (Moodaley, 2015, p. 15).

As discussed in section 4.3.4 of this report, there are cash flow challenges faced by small and medium enterprises when these enterprises have to account for value-added tax on an invoice basis method in terms of s 15(1) of the Value-Added Tax Act, with limited exceptions in terms of s 15(2) of the Value-Added Tax Act. Because of a delay in payments from debtors, small and medium enterprises may struggle to pay the value-added tax payable due to a lack of cash flow, as discussed in detail in section 4.3.4 of this report. This may result in them incurring a tax penalty and interest in terms of s 39(1) of the Value-Added Tax Act, or even further losing business opportunities due to non-compliant status with SARS as discussed in section 4.3.4 above. It is the experience of this author that though a vendor will be able to deduct input tax when the vendor has not yet paid creditors, it does happen that in one tax period the input tax deducted is insignificant compared to the sum of amounts of output tax that must be accounted for to the Commissioner in that tax period.

As discussed in the value-added tax and employees' tax chapters 4 and 5 respectively, contributions to the challenges of complexity are due to certain factors such as:

- Regular changes in tax laws as discussed in section 3.4 of this report.
- Phrases not defined in detail as discussed in section 4.2.5 of this report.
- Options present within the tax provisions as discussed in section 4.3.4 of this report.
- The existence of the various types of taxes that small and medium enterprises may be liable for as discussed in sections 3.4 and 5.2.3 of this report.
- Value-added tax being inherently complex as discussed in section 4.1.4 of this report.

As discussed in section 3.4, regular changes to the tax legislation add to the complexity of the tax system which may indirectly hinder the growth and development of small and medium enterprises.

Small and medium enterprises are faced with various types of taxes, with some lacking trained staff to deal with compliance requirements, which may add to compliance challenges as discussed in detail in section 3.4 and 5.2.3 of this report.

Value-added tax is complex compared to other types of taxes regarding time spent on it (Naicker and Rajaram, 2018, p. 94). The complexity of value-added tax increases compliance costs, as well as the cash flow challenge for some of the small and medium enterprises as discussed in section 4.1.4 of this report. As discussed in sections 4.2.3, 4.3.2 and 4.2.5, certain other factors add to the complexity of value-added tax:

- Cross-referencing of sections that exist within legislation, for example, a taxpayer who provides student accommodation will be required to interpret various tax provisions that refers to each other to ascertain if the taxpayer must register as a vendor or not, for example, having to read registration requirements of s 23(1) of the Value-Added Tax Act, which states if a person should register for value-added tax, together with the definitions of ‘dwelling’ and commercial accommodation as defined in s 1(1) of the Value-Added Tax Act, as discussed in section 4.2.3 of this report.

- The existence of special provisions, for example, how a consideration of supply of goods is determined in respect of commercial accommodation supplied with domestic goods and services for an unbroken period exceeding 28 days in terms of s 10(1) of the Value-Added Tax Act as discussed in section 4.3.2 of this report.
- Bookkeeping skills are required to be able to comply with the Value-Added Tax Act.
- Some of the phrases used in the legislation are not defined, for example, what are considered to be ‘abnormal circumstances’, or a ‘substantial and permanent reduction’ in the size of an enterprise is not defined in the proviso to s 23(1) of the Value-Added Tax Act as discussed in section 4.2.5.

Where special provisions specifically apply to a particular type of taxpayer, such provisions may in some cases contribute to the complexity of the value-added tax. For example, a taxpayer who is carrying out an enterprise that is providing student accommodation that may be obliged to register as a vendor in terms of s 23(1)(*a*) of the Value-Added Tax Act may not do so due to lack of knowledge of a specific provision within the Value-Added Tax Act. An example might be where the said taxpayer is carrying on an enterprise that meets the definition of commercial accommodation in terms of s 1(1) of the Value-Added Tax Act that specifically deals with this type of a taxpayer, as discussed in detail in section 4.2.3.

The existence of special provisions when the tax payable is required to be calculated in terms of s 16 of the Value-Added Tax Act adds to the complexity of value-added tax. For example, for vendors who are carrying on an enterprise as commercial accommodation providers, s 10(10) of the Value-Added Tax Act states that a consideration in money is deemed to be 60% of the inclusive charge where domestic goods and services are supplied together with commercial accommodation for an unbroken period of more than 28 days at an inclusive charge, instead of 100% as is commonly used (see section 4.3.2 of this report).

A further example of special provisions within the Value-Added Tax Act is evident where s 16(3)(*a*)(ii)(*bb*)(A) is applicable as discussed in section 4.3.4 of this report. It prescribes that an amount of the input tax of an acquisition of a fixed property can be set off against the sum of the output tax for the tax period upon registration of a fixed property in a deeds registry.

A vendor who acquires a fixed property and makes a payment in respect of the consideration for such supply will be allowed to deduct an amount of input tax only when the property is registered in the vendor's name, as required in terms of s 16(3)(*a*)(ii)(*bb*)(A) of the Value-Added Tax Act. However, if the very same vendor has made a supply under a sale in respect of which the provisions of s 9(3)(*d*) of the Act apply, the vendor will be required in terms of s 16(4)(*a*)(ii) of the Value-Added Tax Act to account for the amount of the output tax in the tax period in relation to the supply made by the vendor, which will be required when a payment is made in respect of the consideration of that supply which has the effect of reducing or discharging any obligation, whether existing or which will arise in the future, relating to the purchase price for that supply (see section 4.3.4).

This timing difference could result in confusion and the submission of an incorrect return. In addition, this timing difference may result in a cash flow challenge because an input tax will only be allowed as a deduction on the registration of the fixed property at the deeds registry as compared to the output tax which is accounted for on payment date. It is submitted that the delay in allowing input tax deduction until the registration is effected at the deeds registry could protect the fiscus if the property transaction does not proceed to registration as discussed in section 4.3.4 of this report.

Some small and medium enterprises are known to lack bookkeeping training and qualifications necessary to perform all bookkeeping duties (Nyathi and Benedict, 2017, p. 1) that are needed to comply with the value-added tax compliance requirements, for example, the preparation and furnishing of a return to the Commissioner in terms of s 28(1)(*a*) and (*b*) of the Value-Added Tax Act. A lack of bookkeeping skill is a major challenge that adds to an increase in compliance costs for some of the small and medium enterprises because some of these enterprises may consider hiring an external expert to assist with complying with value-added tax as discussed in section 4.2.4 above.

Phrases that are not defined that are used in the value-added tax provisions, add to the complexity of the value-added tax provisions, for example, ‘any substantial permanent reduction’, ‘abnormal circumstances of a temporary nature’ in terms of proviso to s 23(1) of the Value-Added Tax Act which refers to when the amount of R1 million in respect of taxable supplies during a 12 month period will be deemed not to have been exceeded, as discussed in detail in section 4.2.5 of this report.

Where phrases are used that are not defined in the legislation, for example, ‘abnormal circumstances of a temporary nature’ as discussed in the preceding paragraph, a need might arise to interpret them. This contributes to the complexity of the tax rules, and it may add to an increase in compliance costs because to comply with such complex tax rules, some of the small and medium enterprises will have to consider hiring an expert to interpret the tax legislation and assist with complying with the tax rules.

As discussed in section 5.2.3, complexity arises where there is cross-referencing of sections used in a section of the Act; for example, para 15(1) of the Fourth Schedule states that a person shall apply to the Commissioner for registration as an employer in accordance with Chapter 3 of the Tax Administration Act; which prescribes how a person must register with SARS. Similarly, where multiple words are used to refer to same thing. For example, s 22(1) of the Tax Administration Act refers to registration with SARS (the organisation), while para 15(1) of the Fourth Schedule refers to applying for registration with the office of the Commissioner, which could lead to confusion among small and medium enterprises as discussed in section 5.2.3 of this report.

As discussed in this report, there are certain challenges that small and medium enterprises may encounter, including:

- Deadlines to submit returns (sections 4.4.1 and 5.3).
- Frequency of return submissions (sections 4.4.2 and 5.3).
- A lack of sufficient knowledge (sections, 4.3.2, 4.3.4, 4.4.1, 5.2.3, 5.3 and 5.4).
- Specific record keeping (sections 3.3.3, 4.5 and 5.4).
- Use of multiple words referring to same thing (section 5.2.3).

In terms of s 28(1) of the Value-Added Tax Act, returns and payment to the Commissioner for the tax payable must be submitted on prescribed deadlines, for example, on the last business day of the month following the end of a tax period where payments are to be made electronically, as discussed in section 4.4.1 of this report. And in terms of para 2(1) of the Fourth Schedule, there is a prescribed deadline on which the employees' tax shall be paid to the Commissioner, for example, within seven days following the end of the month on which the employees' tax is deducted or withheld, adding to the administrative burden as discussed in section 5.3 above. As discussed in section 5.2.3, small and medium enterprises are known to be subject to various type of taxes with different deadlines that together add to the administrative burden.

As discussed in section 5.2.3 of this report, some of the small and medium enterprises lack trained staff to manage tax affairs, which is a challenge. This lack of knowledge may result in these enterprises not complying completely with tax provisions. They may incur administrative penalties in terms of s 210 of the Tax Administration Act because of non-compliance with s 28(2) of the Value-Added Tax Act that states a return must be submitted irrespective of whether there is tax payable or refund due as discussed in section 4.4.1.

Returns are required to be submitted as per the tax periods referred to in s 27(1) of the Value-Added Tax Act (see section 4.4.2 above). The tax periods referred to in s 27(1) of the Value-Added Tax Act present various challenges, as discussed in detail in section 4.4.2 of this report, such as administrative burdens, adding to an increase in compliance costs in that some small and medium enterprises may find themselves having to submit returns more frequently, for example, every two months as opposed to those who have to submit returns twice a year. Small and medium enterprises that are required to submit a return every two months may experience a cash flow challenge, particularly in some industries such as those doing business with state organs, where a vendor may be paid after 90 days from the date of the tax invoice. It is the experience of this author that despite the government commitment to pay small and medium enterprises within 14 days upon a submission of the tax invoice, some of the said enterprises are still paid late by certain state organs, for example, after more than 90 days from the date of a tax invoice.

Section 16(2)(*c*) of the Value-Added Tax Act prescribes that records must be maintained where the supply is a supply of a second-hand goods or, of goods in terms of s 8(10) of the Value-Added Tax Act where any goods are repossessed or where there is a surrender of goods under an instalment credit agreement, adding an administrative burden given that the required records are specifically for the value-added tax provisions as discussed in detail in section 4.5 of this report.

In terms of para 15(1) of the Fourth Schedule, a person who is an employer is required to be registered as such with the Commissioner. Confusion may arise in some the small and medium enterprises because they might not be aware if they should register as employers or not. Confusion may also arise in that in order to register as an employer, a person must employ an employee who earns remuneration, **and** who is liable for normal tax. Where a person earns remuneration that falls below the tax threshold, he or she will not be subjected to normal tax, which may be the cause of the uncertainty discussed in section 5.2.1. Confusion may also arise, for example, where one small or medium enterprise with many employees who earn remuneration below the tax threshold does not have to register as an employer; while a fellow small or medium enterprise having fewer employees who individually earn remuneration above the tax threshold will have to register as an employer. The one with fewer employees may not fully understand why they must register as an employer, while the other is not obliged to do so. Further, a person required to register as an employer must do so within prescribed timelines in terms of s 22(2) of the Tax Administration Act.

Small and medium enterprises are exposed to various types of taxes, which may add to the administrative burden of having to comply with all registration requirements of all types of taxes to which they are exposed. However, while it is a challenge, they will only have to register once for each type of tax where applicable, as discussed in sections 3.3.1 and 3.3.2 of this report.

Section 5.3 of this report discusses in detail the challenges that exist because of the calculation of employees' tax. Given a broad definition of 'remuneration' and lack of knowledge in some of the small and medium enterprises, a problem exists where remuneration may incorrectly be calculated.

6.1 Areas for further research

The challenges that are discussed in this report in respect of the tax knowledge required, tax compliance requirements, and tax complexity in respect of small and medium enterprises in South Africa, warrant further research. There are areas pertaining to small and medium enterprises that this report has not researched nor addressed, including:

- This report did not provide solutions to the challenges raised (other than consulting external experts) and as such, there is a need to do research to provide solutions.
- A comparison of the South African tax system where it applies to small and medium enterprises with other countries' small and medium enterprises tax system, is needed to compare how other countries have dealt with some of the challenges raised in this report.
- A comparison between ss 12E and 12C of the Income Tax Act and why small business corporations may prefer one over another.
- The impact of para 3 of the Sixth Schedule which prescribes persons that do not qualify as micro businesses, on the said micro businesses not registering for turnover tax.
- The impact of turnover tax awareness programmes by SARS on micro businesses and why micro businesses are not registering for turnover tax.
- How do the regulations determining what a small enterprise is for the National Small Enterprise Amendment Act compare to the various definitions in other tax legislation?

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